THE RELATIONSHIP BETWEEN THE MINISTER OF POLICE AND THE COMMISSIONER OF POLICE IN NEW ZEALAND

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CONTENTS

CHAPTER

ABSTRACT

This paper is introduced by a discussion of the concept of law and order. The concept of law is then distinguished from the concept of order and the political significance of this separation is is illustrated

The conventions and practices of Ministerial authority and responsibility under the Westminster system are reviewed to determine the degree of accountability that applies in New Zealand. This is then distinguished from the accountability accepted of the Minister of Police in the Westminster system and particularly in New Zealand.

The legal precedents are examined and the conventions are established in the application of the legal accountability of the Police to the judicial system rather than the Minister.

The functions of the New Zealand Police are summarized as are the decisions structures and bureaucratic load of the Commissioner of Police as the Head of a Department of State. The conflict between the conventional accountability to the law and the accountability to the democratic system is demonstrated.

The New Zealand experience is re-examined to confirm the thesis that the legal accountability is at best an inadequate explanation of the accountability of the New Zealand Police. In addition, any electoral accountability has been displaced or replaced by an informal system of direct accountability to the community.

INTRODUCTION

1. GENERAL INTRODUCTION

In the last decade more than a few incidents have focused attention on the role and accountability of the Police in New Zealand. Several issues remain unresolved and the official viewpoint continues to be debated.

Three institutions dominate the middle ground of the debate, those of police, politics and the judiciary. My study focuses on the relation between the Police in New Zealand and the Political institutions. Specifically I have chosen to examine the relationship between the Commissioner of Police and the Minister of Police. The conventional explanations are based on the legal relation and minimize the effects of politics and bureacratic necessity. My belief is that these explanations are inadequate. Other studies have been undertaken in this area by political science and public administration scholars and commentators. Their views are relevant to this study but I hope to take the relationship in practice between the Commissioner and the Minister to illustrate the problem. The subject has been studied several times in several countries in different forums but in my view in each case there has always been one question left unanswered. Can the Minister of Police direct the Police in any matter other than one concerning the prosecution

of an individual which will ultimately be the concern of the Courts? There are several useful recent New Zealand studies that in some cases express concern regarding the accountability of the Police in a democratic society but none satisfy my question. [1]

I do not suggest that the legal scholars are wrong but that the appropriate issues cannot be resolved in the judicial forum. It must be acknowledged that this study will emphasise the political and public administration aspects. This is justified on the grounds that the political and bureacratic mechanisms are in continuous session and not always in the glare of public hearings. This principal is developed in Chapter III.

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[1]Orr, Gordon, Professor, "Police Accountability To The Executive And Parliament", an address in the public lecture series, 'Policing New Zealand', Victoria University of Wellington, 13 July 1983. At a later lecture on 27 July see Palmer, Geoffrey, MP, "The Legislative Process And The Police". See also Thompson, Warren,'Responsibility and Responsiveness in the New Zealand Police'in Public Sector Vol 6 No 1/2 July 1983, and

Holland, K. J., "The Polical And Public Accountability Of The Police", case study for Senior Administrators Course, New Zealand Police College, 18 July 1984

The motivation for this study is dominated by the need to satisfy an academic requirement but is intended to assist in the resolution of the problem. I believe the political role of the Police in a modern western democratic state is not widely understood by the police themselves, by the politicians, by the courts or by the public. The study began with research into the Police in politics. This was unfocused initially but moved to examine the Police response to community initatives both at a formal and an informal level. This led to reading in the area of the implications for the Police in a democratic society where attempts are made to have them accountable as are other organs of the state. Finally, the study focused on the central figures of the accountability mechanism, the Minister and the chief officer of Police.

I seek to establish that the relationship between the Commisioner of Police and the Minister of Police is suffiently personal that much significant communication is informal. The relationship is dependant on its dynamics rather more than it is on finely judged legal precedent.

Methodology was constrained by the confidentiality of the relationship between the Minister and the Police chief. Additionally the lawyer-client relationship between legal advisers and their police chief or ministerial superiors has been preserved in the Official Information Act 1982. This has

been breached several times recently because of political necessity and sufficient evidence has been made public to permit a reasonable hypothesis to be supported. Statistics are used on a few occasions to establish tendencies and to illustrate the functions of the Police. An attempt has also been made to illustrate the content of routine correspondence from the Minister to the Commissioner. The author of this paper is a police officer of commissioned rank with more than 25 years service. The personal bias that this may infer is acknowledged. Undergraduate studies as an adult student at Victoria University were in political science and public administration may in part explain the re-examination of the legal arguments.

The papers of the former Minister of Police in the Third Labour Government, the Rt Hon Mick Connelly, have been lodged at the University of Canterbury. Some use has been made of them (see Appendix 3) but they are as yet not catalogued and a full analysis would have been beyond the scope of this paper. They have however provided insight into the relationship.

My arguement begins with a discussion of the concepts of law and order and the separation of the two. This is followed by an examination of the concept of ministerial responsibility particularly as it applies to the Minister of Police in the Westminster system and particularly in New Zealand. An understanding of the functional role of the Police is then

necessary to re-examine the roles of and the relationship between the Minister and Police chief. Then follows a study of the orthodox view which emphasises the original powers, both statutory and at common law, conferred on the office of constable. This includes attempts to reconcile the conflict between the original authority of the constable and his duty to obey the commands of his superiors. I then summarise the role of the Commissioner as a bureaucrat. The conflict between the legal and political relationship follows with accounts of crises and solutions in two Australian states and New Zealand. Conclusions are then developed and summarised.

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2. LAW AND ORDER

In New Zealand the words "law and order" are a familiar pair that evoke some concept of prevention and detection of crime and disorder by a police organisation. "The Police are custodians of what is invariably known in the political field as the law and order issue."[1] The police institution tends to monopolise the issue. This section explores its origins to explain its ideologies and its position in the political space between government and the consumer. Secondly while it is familiar to see law and order linked in such a way that it describes one concept, it is reasonable and useful to distinguish them.

The ideology and legal structures of the New Zealand Police have their origins in the British experience. Most if not all of the legal precedents refered to in Chapter III are from english courts or are based on the precedents of the english courts. So it is there I look for the origins of the New Zealand Police.

At the time of Sir Robert Peel's initiative (1829) in London, the political elite were concerned with enforcing the

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[1] Palmer, Geoffrey, Public Lecture Series, Policing in New Zealand, at VUW, 27 July 1983)

laws protecting the rights of property owners from disorder in the streets of London. [1] There was opposition to the concept of a professional police service on the continental model. But there was even greater apprehension of street disorder that interrupted the free use of the streets so necesary for commerce. This was accompanied by the underlying fear of revolution at a time of an unpopular monarchy, poor economic conditions, unemployment and strikes. An efficient police seemed a lesser evil than periodical anarchy. It is significant that at that time and to this day, the City of London being the financial centre of an empire, chose to remain separate from the "Metropolis". The ruling elite of the propertied class were opposed to the formation of the police system.

The later development of a professional police in Liverpool (1836) followed a path similar to the London initiative. Foreign trade and emmigration through Liverpool had encouraged a new elite in the merchants. It also encouraged a significant "secondary economy" including a flourishing if informal street trade. Public order in the merchants residential

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[1] Footnote: There are alternative views of community concerns at that time and they are summarised by Colin Vick, Police Staff College, Bramshill, England, in his critique of D335 Issues in Crime and Society, Open University.

area became a major concern, firstly to keep thieves and beggars a safe distance and secondly to suppress the occasional outburst of the lower classes in the form of "King Mob".

It is useful to digress at this point and look briefly at the "old police" in Liverpool. They pre-dated the "New Police" and were replaced by it. It was composed of three organisations with the division based on the existing economic order. The Day Police established in 1721 were elected from the Freemen of Liverpool and their major role was to guard the financial centres and give effect to court orders that maintained the system of exchange. By the middle of the eighteenth century their role had shrunk to daylight activities. In the beginning, Freemen, by midcentury the practice of substitutes meant that the Freemen could concentrate on their financial activities by paying another person to discharge the duty. The Day Police declined in social status. They were recruited from the social class they were to police and became paid agents of a particular class. [1]

The second agency was the Night Watch whose duties were twofold, firstly to patrol the darkened streets, taking into custody "night walkers" who failed to "give a good account" of

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[1] BROGDEN, Michael, (1982), The Police: Autonomy And Consent, Academic Press, London, p 54.

their activities, and secondly the task of cleansing the thoroughfares. Statutory limitations on the financial and taxation authority of the corporation meant that the Night Watch were administered by a separate statutory body of Commissioners. The cleansing activity of the Night Watch and disposal of night soil generated revenue for the Watchmen which subsidised the cost of the Watch.

The third force was the Dock Police, specifically set up by the Corporation (1811) to suppress thieving on the Liverpool Docks. The cost of the force was raised by a direct levy on the goods passing over the wharf. The Dock Police were especially important as they were the model upon which the New Police were based. They were amalgamated with the New Police in 1837.

This proliferation of policing organisations in the early years of Liverpool and London based on competing economic mechanisms was followed by a national initiative in the form of the Municipal Corporation Act 1835 which provided for the introduction of local authority based policing services. Supervision was to be by subcommittees of the authority.

The early politics of policing followed the fortunes of the economic competition of the the old elites with the emerging merchant and industrialist groups within city government. The media debates and the changing balance of party fortune in Liverpool during 1835 was concerned not with establishment but

with political control. There was much speculation on the instructions issued to the Police by the Council when dealing with the opposition.

It can be seen that the New Police began with a significant political input and that major concerns were the suppression of street disorder, ie suppression of the lower classes on behalf of the ruling elite. Of course any description of the early experiences of the Police in England must acknowledge the time spent investigating crimes of dishonesty or violence. From these early experiences the traditions of the english policing systems were built. This is the tradition that was eventually inherited by the young colony of New Zealand in 1886.(see Chapter III)

This is not to suggest that New Zealand directly inherited the system and values at the time of colonisation. The english experience was paralleled at the beginning of the century with a reluctant military, irregulars, militia and the Armed Constabulary followed by the Police Force established in 1886. The policing up until this time having been military in form and role and primarily concerned with reluctant Maoris. The limitations of the military response to civil policing was already understood.

Recent comment in the United Kingdom and elsewhere by criminolgists emphasises the difference between the Police in

their role of maintaining public order and their role of suppressing and investigating violence and property crime. "Law" can be distinguished from "disorder." [1] Whatever the social ills that generate 'anti-social' behavior, the police role of maintaining public order confronts the police and the consumer in a situation where the policeman is seeking to modify the behaviour of the consumer or inhibit some immanent activity. It is more 'political'. Maintaining order is less dependent on public support. It often involves large detachments of uniformed police with a specialized role, moving about under centralized direction.

Before the establishment of the London Police the British Parliament had set up the Irish Constabulary whose concern it was to ensure public order (read political order) This model was exported to India, New South Wales and South Australia and others. The colonial police under British command in Hong Kong, India, Singapore to name a few locations, have always shown considerable expertise in suppressing large scale disorder among the less priviledged subjects. These skills were not repatriated with the rest of the prizes. In 1984, we see large formations of

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[1] see BROGDEN, Michael, op cit, or CLIFFORD, William, (1982), "Policing a Democracy", Australian Institute of Criminology, Phillip, A. C. T.

uniformed police with arms linked pushing equally large groups of dissident miners with little recourse to the simple technology and tactics honed in the streets of Calcutta, Singapore and Hong Kong up to 35 years ago.

But the ruling elites in the beginning of the nineteenth century were less enthusiastic about having such a force at home. Unpublished research by the writer in New Zealand in 1975 suggests this continues today although the cause is uncertain.[1] The fear was of a modern centrally controlled police with a paramilitary capability. In 1981 in New Zealand the South African Rugby Tour saw the "largest and most demanding" disorder problem ever undertaken by the Police with the purpose of maintaining order on the streets. The issue was complex including the freedom of movement in New Zealand of a particular interest group and the freedoms of blacks in South Africa.

It is this class of conflict that stimulates the calls for accountability of the Police. It is in times of crisis generating public disorder that the conflict of police roles arise. Riots in Brixton, Toxteth and Bristol in England and the

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[1] Hunter, L. J., (1975), Victora University of Wellington, student research project, suggests the higher the Socio-Economic Status, the lower the support for increased police powers to suppress crime)

Springbok Tour disorders in New Zealand of 1981 are such stimuli. There is little pressure for accountability on issues such as burglary or robbery.

It is appropriate to ask what it is about public order that introduces a political role. The concept of civil disobedience or the flouting of the law by significantly influential groups within the community introduces the concept of breaking the law as a political act. Justice Bright[1] in his report on anti-Vietnam demonstrations in Adelaide in 1970 has made a useful contribution to perspectives on demonstrations.

With his analysis of demonstrations as "...interruptions" he comments on the apparent motivation of demonstrators as being educational or persuasive and their probable effect on their fellow man. He suggests the real purpose is to unify the disaffected group. Much of their 'theatre' is obscure to the out group. Yet he distinguishes the law breaking that often accompanies such a demonstration from violence and property crime that he dismisses as "..obvious criminal offences."[2] The question quickly reverts to a discussion of ends, means and

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[1] Report On The September Moratorium Demonstration, (1970), Adelaide.

[2] op cit, p 69.

morality. In the words of J. S. Mill "What those rules should be is the principle question of human affairs".

Order has a priority over the law. Whereas the law is well defined and known if not always understood, the concept of order is less easily defined. Where the need for order and how it may be achieved is widely agreed upon, it has been included in statute law. For the purpose of legislation it has been defined as the absence of order amounting to disorder. As to the extent of the departure from order that will amount to disorder, the court in its role of interpreting the meaning of the legislators has determined the departure as 'sufficient' to warrant the intrusion of the criminal law.[1]

This legal definition has limited use in this study. The concept of order is better defined as a civil state of peace and freedom. Both terms require some development. Peace we can describe as the absence of behavior that invokes fear or apprehension. Freedom we can define as a condition wherein individual choice is maximised and the only limits to an individuals freedom are those necessary to maximise the freedom of others. Neither concept is absolute. Freedom has other difficulties in its definition. While many in our community would claim to be free, some theorists would present an argument that suggests we have little choice in what we do, ie the

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[1] Melser v Police, (1976), NZLR 437.

concept of free will is a myth. Criminal acts often breach the peace and many crimes are an intrusion into the freedoms of others.

The history of the development of the criminal law has been to codify social mores that inhibit disorder. Thus law and order are not mutually exclusive terms. However this study is focused on the Police in western democratic societies and my argument is concerned with institutional and legislative curbs on freedoms as they are imposed by both the political and bureacratic executive.

The difficulty lies in placing the police in the latticework of the political structures in a western democratic system, particularly within the Westminister system. Where does the police service derive its power, influence ,authority, and to whom is it accountable. With few exceptions this can be quickly determined for all other organs of the state. A statutory instrument establishes them, funds are provided by the executive and there is an accountability through a specified hierarchy to a member of the executive. The government of the day has a direct or indirect control over any or all of the decisions of the organisation. This is modified in the many quangos where there is often a less direct form of control. But even the latter can be called to order by simple executive direction. They all owe their existence and form to the

executive. They have insignificant alternative sources of power.

The police have since their inception followed a different path. The budgetry control of local government and later central government has always been counter balanced by the judiciary. The concept of the law being supreme arbiter enables civil conflicts to be resolved using known and knowable rules structured on agreed moral concepts. The need for an apparently independent judiciary is widely accepted. There is a lesser acceptance within the judiciary of the need for an independent police.[1] However there seems to be wide acceptance of the concept that politics should be separate from the law as it impinges on the individual. This has the effect of increasing the independence of the police from the political executive. It also increase the accountability of the police to the judiciary.[2]

This infers that the relationship between the police and the executive differs significantly from that experienced by most other organs of the state. The concept evoked has a analogy with professional groups within the state who claim an

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[1] Justice Lusher p 706

[2] Comment on the effectiveness of latter in Chapter III, the Legal Relation

independence from their administrative managers and in so doing claim an independence from the executive. The medical practitioner working for the state has a loyalty to his occupational group ethics. Legal professionals have a similar dichotomy. The state organ that employs them becomes the client. Probation officers in New Zealand have recently claimed that their responsibility is defined by statute and answers to the Courts as interpreted by the judiciary.

Explanations of the United Kingdom experience over the past several decades have re-examined the role of the local officials and described a model they have called the 'urban manager'.[1] Both public and private officials act as 'gatekeepers' of the urban system positioned as they were in the local and the national system. Both government and private enterprise have tended to centralize. Their autonomy is constrained by ecologic, economic and political forces. Firstly the local geography influences the costs of services. Short distances and easy terrain facilitates resource supply. Secondly the source of public funds in cities has tended to shrink at a time when the cost of intervention has been increasing. Finally the freedom of movement in resource allocation must take into account the local political relation. Frustration of it will

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[1] Brogden, loc cit, p 30

generate the antithesis, increased political intervention at an effective level.

It is not difficult to distinguish the english government structures from those in New Zealand. While there are obvious parallels with local government in the distribution of resources, there is no formal analogy with the system of local authority watch committees or since 1964, Police Authority. The New Zealand Police have no formal responsibility to any local authority other than in the enforcement of by-laws and there is little formal enthusiasm for the latter. Lastly the Police in New Zealand is an organ of central government with little competition from local government.

Despite these apparent differences, it can be demonstrated that there are similarities. Local policing concerns do translate into tensions between local and central control except they are expressed by the police employee association in a political mode. In 1984 attempts were made to influence the election by public debate of law enforcement policies in party manifestos by the public circulation of a "Special Election Newsletter." Its effect is unknown.

Chapter II

THE MINISTER OF POLICE

1. THE MINISTER IN THE WESTMINSTER SYSTEM

The role of the minister in western parliamentary democracies of the Westminster model varies from time to time and place to place. Constitutional conventions are modified by legislation. The personality and character of ministers, prime ministers and governments are not constant. The environment in which decisions are made changes with local, national and international events beyond their control. In the global village, no government can ignore the effects of their decisions on other states, larger or smaller. No government is insulated from the effects of OPEC decisions, trade agreements, or balances of military power groupings.

The Minister usually functions as the senior administrator in the units of bureacratic administration variously known as Departments of State or Ministries, each having a more or less defined subject area of interest. In a few instances, government members have been appointed Ministers without a portfolio. The Minister takes the final decision on many matters and is seen as directly responsible for his Department to Parliament for both his own decisions and the decisions made by the bureaucrats. Conventionally, in the event

of impropriety or maladministration, he would be called on to resign. Despite many calls on Ministers to resign however, they seldom do so. There is a gap between traditional constitutional theory and political practice. No minister has resigned since 1934 for failures connected with his administration.[1]

The general principles of Ministerial responsibility in relation to the sanction of resignation dismissal suffer from a vagueness that does not set an objective standard by which a Minister's conduct can be compared. Their political responsibility is in areas defined by statute or convention. Legislation may define their office, powers and duties. Of convention, Dicey suggests the single ultimate object of British conventions is to ensure that Cabinet and Parliament in the long run give effect to the will of the majority of electors.[2] If there is no defined duty or power, it is difficult to hold him accountable. If the responsibility is one of convention, and the questioned incident involves poor judgement or bad departmental administration, then political accountability has no objective test. Culpability is shapeless, analysis of degree is not

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[1] de SMITH, S. A.,(1973) Constitutional And Administrative Law, 2 ed, Penguin, London, p171

[2] Dicey quoted in Responsble Government in Australia, Politics, Vol XI, May 1976, p44.

helpful.

The subjective judgement by the party leadership of the electoral damage will decide his fate. This being so, a statutory power given a Minister is a two edged sword that can behead a minister on the backswing in a manner that will be discussed in Chapter III. The convention of ministerial responsibility is closely allied with the collective responsibility of Cabinet. Of the concept of responsibility, much has been written but it is still not clear what is meant by it. It can mean responsibility in the sense that acts done are mindful of others needs, but the dominant use of the word revolves around the concept of accountability, ie, that the person with the responsibility can be called to account. The convention in the United Kingdom has been that the Minister in charge of a Department would accept responsibility for a significant misjudgement. The accepted practice was to resign the portfolio. But this practice has waned over recent years though Lord Carrington's resignation on the surprise invasion of the Falklands by Argentina is such an example but may not be typical of future ministerial behaviour.

In New Zealand the traditions are followed less closely. Most Ministers of the Crown in this country have several portfolios and during the parliamentary session, in times of limited majorities, are tied to the Chamber. Few if any

ministers have a permanent office within their departmental headquarters. They mostly work from the Executive Building annexed to Parliament itself. They are close to their Cabinet colleagues but far from their immediate subordinates. This reduces the immediacy and intimacy of their contact with the activities for which they are conventionally accountable.

As W. K. Jackson comments[1] the individual accountability no longer exists in New Zealand. Answerability does to a limited extent and this has been enhanced by the Official Information Act. The illustration given by W. K. Jackson in 1973 was that of a Minister of Marine being castigated by a Magistrate for what appeared to be a political act under the guise of a ministerial decision to enhance safety at sea. It is clear in 1983 that vicarious reponsibility of a Minister for his Department do not affect his personal political fortunes. Nor it seems for a personal error. "Resignation requires some personal failure of the Minister and personal misconduct.[2] In 1984, a High Court ruling that detention of suspect drug couriers was unlawful. Far from accept responsibility for a serious criticism of his

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[1] Jackson, W. K., (1973), New Zealand: Politics of Change, Reed, Wellington, p 155.

[2] Roberts, J, The Public Service and Ministers, in Public Sector, Vol 6 No 3/4.

Department (Customs) by Mr Justice Casey, the Minister chose to debate the rightness of the judges decision and concluded "Our duty is to find the drugs". [1] The inference is that that duty takes precedence over the duty to comply with the law as interpreted by the judiciary. The Minister gave preference to the interpretation of the law given by his own legal advisers.

More recently, the cost overruns of the Earnscleugh irrigation scheme have generated a savage dispute involving the professional engineers of the Ministry of Works and Development, the Public Service Association, the Minister of Works and the Treasury. Early estimates of the costs of this major scheme have risen remarkably. The estimates approved by Cabinet in July 1983 were prepared before he became Minister. The previous Minister, D. F. Quigley, claimed that the inadequacies were symptomatic of the shortcomings of the public service generally.[2]

The departmental head, Commissioner of Works, defended the efforts of his subordinates on the grounds of the technical difficulty of accurately assessing groundworks in the rugged and shattered rocks of Central Otago. He also commented on the political pressure exerted by farmers wanting irrigation. A Treasury report dated 1976 was resurrected and made public under

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[1] Christchurch Press, 23 Feb 1984.

[2] loc cit.

the auspices of the Official Information Act 1983. This report pointed to the limited economic return of the scheme, below the 10% guideline supposedly in use. It also reported on the professional skill and managerial weakness of the Ministry staff working on the scheme. Treasury officials had reported more than once on a project that had overun early estimates of $5.9 million and is expected to cost in excess of $20 million. Constitutionalist and then Deputy Leader of the Opposition Geoffrey Palmer pointed out that Cabinet was aware that the scheme was costly. The Minister of Works discounted Treasury advice on the grounds that it was not economic advice. The Deputy Leader of the Opposition called for the resignation of the Minister before making statements critical of the staff involved. The Minister blames the ineptitude of the public servants. The Acting Prime Minister supported the right of the local member for the area, himself a member of Cabinet, to hold public servants responsible, and in the process avoid discussion of ministerial responsibility.

In discussing the conventions of Westminster, S. A. de Smith (1973) attributed the preservation of the impartiality and anonymity of public servants to the political answerability of Ministers.[1] A comparison by W. K. Jackson (1973) of the

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[1] de SMITH, S. A., (1973) Constitutional And Administrative Law, 2 ed, Penguin, London, p 173.

New Zealand experience suggested then that the Minister in this country had control but was not accountable. He was a " ... public relations officer for the department.[1]

The 1984 experience seems quite different. The Minister told the Commissioner of Works and the Chairman of the State Services Commission that they should take action over inaccuracies in the estimate. The local member said publicly that 'heads would roll' over the issue. The Deputy Leader of the Opposition called for the resignation of the local member for his joint responsibility for the Cabinet system and his public attack of the government employees involved. The local member claimed it was his public duty to name the 'culprits'. The employee group were critical of the Ministerial stance, and in return, the local member confronted their objections by warning them 'not to try his patience'. Three named public servants in the establishment concerned were to be transferred and 39 new appointments were to be made.

It is clear that in 1984, there was a rejection of the accountability conventions inherited from Westminister. The anonymity of public servants had been breached and the public employee organisations had themselves

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[1] JACKSON, W. K., (1973), New Zealand: Politics Of Change, Reed, Wellington, p 173.

called for the resignation of a Minister, but without any real prospect that he would. Cabinet accepts joint answerability for their group decisions but rejects personal accountability for the inadequacies of the departments they supposedly head.

The conclusion is that the conventions of ministerial responsiblity inherited from Westminster have in the New Zealand context been modified. Responsibility now rests with the collective responsibility of Cabinet. In the short term, conventions have given way to political expediency. In the long term, the new form may become the 'new' convention. The executive remain accountable to the electorate on a triennial basis but in practical terms, accountability has become answerability by Cabinet to the House of Representatives. Public odium at best is the final arbiter.

THE POLICE MINISTER AS AN EXCEPTION

Having examined the authority and accountability of the Minister in the Westminster system, it is appropriate to re-examine the conventions reviewed in the first section of this Chapter as they apply to the Minister having the civilian police service within his portfolio. The constitutional and legal structures that contain the police are not consistent within the states that have drawn on Westminster for its forms.

The development of the United Kingdom over the last several centuries seems to have encompassed a slow centralization of political structures, accompanied by a healthy fear of the growth of too strong a central government. Policing began as a village level administrative procedure that grew into forms of nightwatchmen in the larger urban centres.

As local ordinances provided for these special services, control was vested in the local justices. As systems developed, the rules of practice developed by the justices became the web of common law that is still depended upon on to clarify the subtle relationship between the law enforcement agency and the executive.

On each occasion when developments of the system were debated, the English could look to Europe for experiences worth avoiding. The traditional police states of Prussia, Austria and

France had lessons for Great Britain.[1] The same thought surfaced again in the Royal Commission of 1962 though it was rejected by the commissioners who commented that a despot would have no difficulty assuming command of the Police whether they were centralised or not. The german experience, 1933 to 1945, included control of the judiciary and the police.[2]

During these early developments, Westminster passed legislation first enabling a local government sponsored police service[3] and later making the provision of a police service mandatory in the urban centres. Control of the new organisations was to be vested in the Justices of the Peace. Vestiges of this remained until the Police Act 1964(UK) installed the Commissioner of the Metropolis (London) as a constable rather than swearing him as a justice. This change did not make the Commissioner of Police part of the judicial system as he did not carry out any judicial functions. It is also true that being sworn as a constable did not subsequently make the Commissioner a constable. He carried out few if any of the functions required of a constable. , ie law enforcement. However the office of

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[1] CHAPMAN, Brian, (1979) Police State, Pall Mall, London.

[2] GRUNBERGER, Richard, (1971), A Social History Of The Third Reich, Weidenfeld And Nicolson, London, p 116.

[3] Municipal Corporations Act 1836 (UK)

justice formally separated the Commissioner from the traditonal obligations and mechanisms of accountability in a democratic state.

Legislation in the form of a Police Act was passed in 1919 in the aftermath of a post war strike by Police over pay, conditions, and the right to associate as an employee union. The strike was suppressed but did see the recognition of a Police Federation, albeit almost a company union. The same legislation included provision for the Home Secretary to issue regulations controlling administration, recruiting, and supply of the police in the counties. But only after consultation with the Police Council, a representative group of police and local government.

Police services were funded in part by local government and supervision of the resource was managed by a Watch Committee (later Police Committees in rural areas) comprising representatives of the judiciary and local government. Conflict was seldom recorded. It is likely that the committee who appointed men to the task from applicants with a like mind to their own. Appointments and supervision of the Metropolitan Police in London, surrounding Westminster, remained with the Secretary of State for Home Affairs. Final responsibility for internal order in England was with the same Home Secretary a member of the inner Cabinet of central government.

Our knowledge of the conventions and practices of the

early periods depend largely on records of the resolution of conflicts in the system. Following the failure of the 1919 strike, and the subsequent regulations that in some way met immediate demands for recognition, conflicts were few or suppressed in the inter war period. The identification by both British fascists and the labour movement with the working policeman highlighted the ambiguity in their accountability to Watch Committees and Westminster. The issues became obscured again during the post war rebuilding but by the end of the 195Ø's three chief officers had been disciplined. Debates in the House of Commons discussed individual abuses by policemen.

In 1959, the dismissal of Captain Popkess, Chief Constable of Nottingham, by his Watch Committee after a prolonged disagreement, was reversed on the intervention of the Home Secretary. The principle espoused called on the decision of the High Court in Fisher v Oldham Corp, a legal precedent discussed later in Chapter III.[1] The Chief Constable was to be independent of Watch Committee control on matters of law enforcement. Despite the sweeping effect of this decision, few confrontations between committees and chief officers are recorded.

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[1] MARSHALL, Geoffrey, (1965), Police And Government, Methuen, London, p 1Ø.

While this incident and its aftermath reduced the apparent discretion of local government, and strengthened the claim of independence of chief constables, it also signalled the increasing involvement of the Home Secretary. It is significant that since 1856 central government has contributed to the costs of policing. At the time of the reinstatement of Captain Popkess, half the finance was provided by central government. It was conditional on a satisfactory performance. The remaining finance was provided by the local authority. Despite this shared financial responsibility the local authorities were becoming very much junior partners.

Despite this, the Minister responsible for police was unwilling to increase his relationship with the various forces. Growing concern in 1959 by Members in the House of Commons that the Home Secretary could not or would not answer questions of concern about policing the cities and counties culminated in the establishment of a Royal Commission with terms of reference that included

> "...to review the constitutional position of the Police throughout Great Britain, the arrangements for their control and administration and in particular, to consider ...
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> (2) the status and accountability of members of

police forces, including chief officers of police."[1]

The Commission heard evidence on various matters including rationalisation of the 117 separate police forces, complaints against police, and the accountability or civil liability of police, the motivation of much of the legal precedent for political accountability. In submissions, the chief officers equated their independence with that of the original powers of the constable and made no attempt to distinguish between the policy decisions of a police official and the particular acts of law enforcement. The Municipal Corporations Association took an opposing view that the only matters in which the watch committees could not substantially intrude involved particular cases. They demanded accountability.

Professor E. C. S. Wade (of Cambridge,) submitted a memorandum to the Commission. It included the curiously worded submission that the confusion about the police independence in enforcement had arisen because it was not sufficiently realised that the maintenance of public order is an executive function. That was strictly speaking everybody's business, but has become for the most part the monopoly of the Police. Geoffrey Marshall described the current beliefs on police independence as

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[1] Report Of The Royal Commission on the Police (UK) Cmd 7831

"... a curious theory".

Following the Report of the Royal Commission, and in part a result of it, new legislation was enacted which provided the mechanism to consolidate many of the smaller forces (now 43); empowered the Home Secretary to regulate the forces and require reports from the chief officers. The latter were to go to the Home Office. The members of the Police Authority (borough authorities were to be watch committees) were to have the right to ask questions but not the right to expect an answer except in issues of administration. It also provided for the dismissal or early retirement of the chief officers 'in the general interests of efficiency'. The power of the police authority to involve itself in promotions was to cease. The control exercised is through the finances of the forces, shared as they are with the local authorities.

This level of responsibility has been described by Geoffrey Marshall[2] a fourth element of the traditional political scientist's categorization of governmental functions

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[1] MARSHALL, Geoffrey, (1965, Police And Government, Methuen, London, pp 16 and 71.

[2] MARSHALL, Geoffrey, (1978), Police Accountability Revisited in Policing and Politics by D. Butler and A. H. Hasley, (ed), McMillan, London, p 51.

"... one that calls for both a measure of acountability and a measure of independence."

The difficulty with comparison of the role of the Home Secretary in the United Kingdom with the Minister of Police in New Zealand is now most apparent. The relationship is not between a Commissioner and his Minister. In England, it is divided amongst some 43 (1984) chief officers who report formally to a police committee on matters of administration and resource but who are more effectively responsible to the police section of the Home Office. Scotland has a different system again.

Despite the position of the State of South Australia in a federation of states with a Federal Police, the relationship of the chief officer of police and and the executive is of special interest as the stresses within it have stimulated a great deal of study. Two Commissions in 1970 and 1978 examined the actual relationship. Most if not all the english legal precedents were followed in discussing police accountability in that State. The conventions regarding ministerial responsibility were espoused if not adhered to in the heat of political battle.

The complexity and subtlety of the relationship in South Australia is no better understood than that which prevails in the United Kingdom. "It is easier to cite examples than to formulate a definition of the circumstances in which the Commissioner of

Police alone should have responsibility for the operations of the Police Force" commented Justice Mitchell in the Report of the 1978 Commission. [1] She said further of Commissioner Salisbury's evidence to the Commission that the Police were responsible to the Crown, not to any elected government or politician, "... in so far as it seems to divorce a duty to the Crown from a duty to the politically elected government suggests an absence of understanding of the constitutional system of South Australia or for that matter of the United Kingdom". This is a significant comment given that ex-commissioner Harold Salisbury was a Chief Constable from York, England before his appointment to the office in South Australia. It seems Commissioner Salisbury is in illustrious company in his ignorance.

It seems clear that there is little certainty concerning the accountability of the Minister for the workings of the Police or for the accountability of the Commissioner to the Minister. This is the case for at least England from where New Zealand inherited her traditions and draws her legal precedents.

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[1] Royal Commission Report On The Dismissal Of Harold Hubert Salisbury, 30 May 1978, Government Printer, Adelaide.

3. THE MINISTER OF POLICE IN NEW ZEALAND

In the previous section, the position of the Minister of Police in the Westminster system as an exception to the usual relationship is reviewed. In this section the specific formal rules applicable to the Minister of Police in New Zealand are examined. While there was always a Minister of the Crown responsible for the Police, the first Minister of Police, the Hon David Thompson was appointed during a Cabinet reshuffle in 1969. Previous Ministers had been referred to as Minister In Charge of Police. The change is probably not significant. It may have been a change of status. It is not clear that the change of status was of the incoming Minister or the Police service or both.

In New Zealand the difference in responsibility of the Minister is written into the legislation. The Ministers of Health, Social Welfare, Energy, and Customs are specifically authorised by empowering legislation similar to the Education Act 1964, Section 4 of which states:

> "The Minister shall have the control and direction of the Department and of the officers thereof and subject to the provisions of this act shall generally administer this Act."

The Police Act of 1958 contains no similar section but provides

for the Governor General to appoint a Commissioner (section 3) who has general control of the Police.

The same legislation provides for the Minister to appoint mid-level and temporary specialist commissioned officers while the authority to appoint all senior officers is retained by the Governor General. (Sections 4 to 6). The Minister may also appoint an inquiry into the conduct of commissioned officers below the rank of Chief Superintendent (section 33). No provision is made for a review of conduct of senior officers including the Commissioner but there are no doubt residual powers and other procedures that would accomplish this should a government consider it necessary.[1]

The Minister is empowered by Section 56 of the Police Act to appoint a Committee of Inquiry chaired by a judge to investigate and report on any matter connected with the Police.

Few of these provisions conflict with the constitutional conventions of the independence of the Police. These have been most clearly stated in judicial reviews and are known to have been followed by Commissioners until at least the 1984 election. At that time the conventions, reviewed in Chapter III of this

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[1]See the announcement made by the Prime Minister on the early retirement of Compton, Commissioner of Police, 1954 to 1955, AJHR, H16.

paper, were being re-examined by constitutional lawyers and political scientists in Australia and New Zealand. The conventions as they are modified by New Zealand legislation are re-examined here. They are summarised as follows:

(1) Police officers are not servants of the executive but holders of public office.

(2) The Commissioner and other officers are responsible to the law alone.

(3) In matters of administration, control and resources, the Commissioner is responsible in to the executive.

(4) In matters of law enforcement, the executive cannot direct Police policy or emphasis.

The relationship between the Minister of the Crown in charge of the Police and the chief officer of police has been described many times by Courts and Commissions when reviewing problems ranging from actions for torts committed by lone constables to inquiries into the refusal of a chief officer of Police to comply with the directions of a cabinet minister.

Recent Commissions in Australia warrant study, despite their dissimilar legislation, as the Judges have addressed the constitutional anomaly from a wider than legal perspective.

"It is plain that the resources of the police force, whether of men or equipment, cannot be extended to

> cover every situation so that in practice some emphasis is necessarily placed on some part of law enforcement or crime prevention, or other police activity at the expense of others and as to which there could properly be bona fide differences of opinion..."[1]

These are the words of Justice Lusher in his 1981 report on the New South Wales Police and are a departure from the conventional judicial absolutist view of the law enforcement responsibility. Competition for finite law enforcement resources is seldom considered.

The same judge said of the relation that there were two competing views that would probably be determined judicially. The first is that in a democracy run under the Westminster system the Police should be subject to executive control. This view is consistent with ministerial responsibility and accountability and is supported in part by statute. The second view is that the chief officer of Police is not subject to control or direction other [2] than in terms of dismissal from office. This interpretation is based on the development of common law principles and appears to dominate the thinking of

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[1] Lusher,J., Report of the Commission of Inquiry, p 712

[2] op cit. p 680

the judiciary. Therefore the relationship can be analysed as a conflict between the political and legal relationship. "Unlike other institutions, the Police apparatus can legitimately justify the the absence of a formal political relation - portrayed as partisan - by reference to the legal relation." [1] comments Brogden of the english experience. This conflict is admirably illustrated by the early Liverpool experience where the statutory powers of the Watch conflicted with the common law status of the constable. The political relation in the form of the Watch Committee was empowered to dismiss a constable if he was unfitted for the duty. But this rule of statute law was compromised if the dismissal was preceded by a direct instruction that the Chief Constable refused to comply with.[2] This legal contradiction tended to strengthen the common law view, supported as it was by the decline of the Watch Committee, accompanied by an increase in the power of the central state. In judicial interest paralleled the interest of the executive of central government.

The Minister of Police in New Zealand has tended to

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[1] Brogden, M (1982),The Police: Autonomy And Consent, Academic Press, London.

[2]Critchley, T (1979) ed, A History of Police in England and Wales, Constable, London.

conform with the conventions espoused in the United Kingdom and the Australian states. While New Zealand has had a national police service and watch committees have never been a feature, the emphasis has always been on the common law conventions. The different structures of a federal state and the disparate origins of Australia and New Zealand have contributed to differing systems. This is exemplified by the recent (1977) establishment of a fully national police force funded by and authorised by the Federal Government.

The experience in the United Kingdom upon which both the Australian state systems and the New Zealand Police draw heavily has a heritage of small county forces and one major metrolpolitan force centred on but without exclusive jurisdiction of one major city. The political base of the county forces was split between local government watch-committee and central government Home Office. Through a process of reorganisation, the number of police authorities in the United Kingdom has been reduced, but the essential dispertion of the political power over the Police still largely exists.

Unlike Australia and the United Kingdom, New Zealand has a unicameral legislature and a single centralized government. Police functions in the form of local government traffic control officers are the exception rather than the rule. Policing and traffic control are carried out by central government. Of the

two departments of state, the Police Department is the largest in the number of employees involved in 'law enforcement'. However for the purpose of this study, the Road Traffic Enforcement Branch of the Ministry of Transport will not be included in this study of the Ministerial role.[1]

The limited amount of evidence there is suggests that the role of Minister of Police in New Zealand is not an important one in relation to the other cabinet posts. In the United Kingdom, the Police portfolio is carried as a part of the internal affairs portfolio of the Secretary for Home Affairs. There is little evidence to suggest that in New Zealand the Police portfolio ranks highly or that an appointment to the portfolio is sought after by ambitious backbenchers.

An indication of its role and significance is in the content of correspondence emanating from the Minister's office. Access to the material is difficult but a study of the general letter file of Michael Connelly, the Minister from December 1972 to December 1975 suggests it was mostly concerned with minor queries and that seldom was the Minister asked to deliberate on matters outside the Commissioner's ambit. As discussed in

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[1] There are about 5100 police officers at any one time and about 1200 traffic enforcement officers, both Ministry of Transport and local government.

Chapter I, there are some difficulties with the methodology as the completeness of the document file cannot be verified. Of the documents, most were concerned with drawing the Commissioner's attention to newsmedia reports (9 cases), asking him to review decisions on constituents (26 cases) and in a few cases suggesting to the Commissioner the tactics to be employed on specific problems. The latter will be considered in detail in Chapter IV. There is little evidence that the Minister routinely deliberated on other than a few specific matters for which he was responsible. One example was the disposal of certain types of firearms seized by the Police or forfeited to the Crown under the provisions of the Arms Act 1958.

The Minister during the period of the Third Labour Government and since could depend on only one secretary with additional typing services to support him. He did not, and does not, have administrative machinery separate from the Police to support him in his policy generation as does the Secretary of State for Home Affairs in London. His letters are written by his secretary or himself, and in almost all cases, he is dependent on the research and legal advice afforded by the officials in the Police Department. For this reason, generation of an independent view would be difficult and unlikely.

Finally, the extent of the Ministers involvement with decisions of the Department are to an extent a function of the

relative importance of the Department in the government system. In 1975, there were 911 cabinet papers prepared. Of those, three were concerned with the Police.[1] Cabinet deliberations are not limited to discussion of cabinet papers. But with the high workload, it would need be a major issue to divert their attention.

It can be seen that the Westminster conventions of ministerial responsibility are followed in New Zealand apparently unmodified by legislation. Differences in practice are accounted for by the small size of the Police Department and the low level of involvement by the Minister in the day to day administration.

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[1] Cabinet papers held in the Connelly collection, University of Canterbury.

Chapter III

1. THE FUNCTIONAL ROLE OF THE POLICE

In this section the role of the Police is examined in an attempt to define their functions, distinguishing the 'de facto' functions from the 'de jure' defined role. The development of the statutory authority is traced with special emphasis on declared duties of constables and commissioners. This is followed by an analysis of actual function. The relationship of the Police with the Minister is in part a reflection of the role of the institution. This is distinct from his relationship with the Commissioner. A definition or at least a description of the role of the Police is a useful precursor to an examination of the subject relationship.

There is no complete and accepted definition of the Police role in New Zealand. In this context, I do not distinguish between role, function or ethics as descriptions of the rules of conduct, ie what is done and within what limitations. J. Glynn reported in 1975 that he found no evidence of any systematic analysis of the Police role in this country up to that time.[1] There are of course many attempts to define

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[1] Glynn, J. F.,(1975), The New Zealand Policeman, The New Zealand Institute of Public Administration, p 9.

what the Police should be doing. The current statement generated by the Police themselves in 1984 is:

> "... to assist the community to prevent crime, maintain the peace, protect life and property, detect offenders against the law and in appropriate circumstances assist those who need help.
>
> The Police will:
>
> -Act within the law and with integrity and endeavor to fulfil their mission with the consent and approval of the public;
>
> -Exercise discretion in enforcing the law;
>
> -Reserve the use of force for situations where other means have failed or are inappropriate

In the histories of police systems in western democracies, there have commonly been statements of the role of the Police.[1] In the English statute of 1829 the duties were "... preserving the peace ... preventing ... felonies and apprehending offenders ..." The two Justices who established that force expanded that authority by issuing the instruction that the first priority for the organisation was the prevention of crime, rather than the

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[1] London Metropolitan Police Force Act, 1Ø Geo. IV. C.44 and Lusher, Justice in Report Of The Commision To Inquire Into New South Wales Police Administration.

apprehension of offenders after the event. The objective of the organisation was to be the complete absence of crime. This instruction, written by Sir Richard Mayne in 1829 is cited as authorative by Lord Scarman in his review of the policing of Brixton after the riots of April 1981.[1]

It is evident that the objectives were not achieved then or since. Whether this is possible or even desirable is outside the scope of this paper. It suffices to suggest that there is little theoretical justification for supposing such an objective is achievable.

In 1929 the Law Lords in London considered the duties of the Police in response to an application from a public company for special police services.[2] Their Lordships said amongst other things "there is an absolute and unconditional obligation binding the Police authorities to take all steps which appear to them to be necessary for keeping the peace, for preventing crime or for protecting property from criminal injury." This concept does not suggest any discretion by the Police is possible or desirable. A successor, Lord Scarman discarded that precedent in 1978 when he declared that the maintainance of order took

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[1] SCARMAN, Lord Justice, Report of the Inquiry Into The Brixton Disorders, Cmnd 8427, p 62

[2] Glasbrook Bros v Glamorgan County Council (1929) AC 270)

priority over enforcing the law , and that police discretion was important in matching Police response to local community desires.[1]

In 1962 the Royal Commission[2] in the United Kingdom summarised the main police functions as maintaining law and order, preventing crime, detection and interrogation of suspects, deciding whether to prosecute, prosecuting, controlling road traffic, conducting specific inquiries, and finally 'befriending' anyone who needs their help.

In 1981, there were riots in Brixton, an inner area of South London in the wake of strict law enforcement by the Metropolitan Police. Within 2 days, the Secretary for Home Affairs, William Whitelaw, appointed Lord Scarman, an eminent jurist and member of the legal committee of the Privy Council to conduct a public inquiry.[3] In his report, Lord Scarman described the function of the police in the words of Mayne (1829, see above) He then drew attention to the problem of maintaining a balance between enforcing the law and the first

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[1] SCARMAN, Lord Justice, Report of the Inquiry Into The Brixton Disorders, Cmnd 8427, p 62

[2] Report On The Royal Commission On The Police, 1962, Cmnd 1728.

[3] SCARMAN, op cit.

priority of maintaining the "Queen's peace", defined as the normal state of society.' Lord Scarman emphasised the importance of public tranquillity over law enforcement. His remarks then distinguish the freedom of a judge to enforce the law 'though the heavens may collapse'.[1] Conversely the policeman's role is to avoid the collapse. Law enforcement may of necessity become a secondary activity. Thus while Lord Scarman lends credibility to Mayne's instruction of 1829 to the New Police organisation, he reinterprets them by his emphasis on public tranquillity at the expense of law enforcement. The protection of life and property is not further mentioned in the discussion of priorities. Scarman goes further when he asserts that the establishing of priorities is a legitimate concern of the community being policed. "...the police officer's first duty is to cooperate with others in maintaining the 'normal state of society'.[2] These views reflect the analytical techniques of the author groups and are a convenient starting point.

Not long after Rowan and Mayne were instructing the first appointments to the Metrolpolitan Police in London, a Constabulary Force was provided in a New Zealand ordinance.

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[1] SCARMAN, Lord Justice, Report of the Inquiry Into The Brixton Disorders, Cmnd 8427, p 62.

[2] Scarman, op cit.

The provision was for an armed force whose role was to "preserv(e) the peace, prevent robberies and other felonies, and apprehend offenders against the peace."[1] The Commissioner and other officers were to be appointed by the Governor. The duties of the members of the force were defined to be to suppress tumults, riots, affrays, breaches of the peace, public nuisances, and offences against the law.[2] The emphasis in duties of the members differs from the intention of the force itself. It is not clear why the draughtsman distinguished them in this way and may not be significant.

The concerns of Government had changed by 1862 when the land disputes stimulated armed conflict. The Colonial Defence Force Act of 1962 and its amendments were repealed in 1867 by the The Armed Constabulary Act, which updated the role of the force to "...putting down rebellion, quelling disturbances, preserving the peace, preventing robberies and other felonies and apprehending offenders against the peace.[3] This force inherited the residual role of the Constabulary and added to this was the suppression of armed rebellion.

For the first time the oath to be taken was legislated

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[1] The Constabulary Ordinance, 1846, No 1, Clause 1.

[2] op cit. Clause 4

[3] loc cit.

and included serving the Crown for three years in preserving the peace, preventing offences, and discharging any other legally defined duty.[1] A third clause defining the duties of the Armed Constabulary in the same words as the 1846 Ordinance defined the duties of the members of the force.[2] The role of the force and the duties of the members contain a different emphasis. Three separate statements describe the role of the force in different words to that of the duties of the members. By this time it would seem that Government's first concern was civil unrest. In the same statute, members of the force were disenfranchised from both provincial and national elections, a reflection of political role they played.[3]

In 1886 with the land conflict behind them, the General Assembly enacted the Police Force Act which no longer referred to the Police as an armed force. The role of the force was to be preserving the peace, preventing crime and apprehending offenders against the peace.[4] The commissioned officers of the force had duties defined as suppression of tumult, riots,

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[1] Constabulary Ordinance, 1846, No 1, Clause 12.

[2] Op cit. clause 18

[3] Op cit. clause 26

[4] The Police Force Act, 1886.

affrays, breaches of the peace, public nuisances and offences against the law.[1] The language equates with that of the role of Armed Constabulary rather than a particular group within it in the ordinance of 1867.

The New Zealand statutes were consolidated in 1908. This included the Police Act, 1908. The duties of all members remained the same.[2] The duties Of the Commssioner remained the same.[3] The direction of the Police was vested in the Governor.[4] He could make regulations, direct employment and distribution of the Police.

The Act was replaced by a new Police Act in 1913. The Minister was the Minister of Justice. The Commissioner was to have general control. The duties of the constables remained the same.[5] The act was amended in 1919[6] and again in 1924 authorising the Minister to appoint inquiries into misconduct by police.

The Act was replaced again in 1947 by legislation which

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[1] Police Force Act, 1886, Clause 4.

[2] Police Force Act, 1908, Section 5

[3] op cit. section 4

[4] op cit. section 11

[5] Police Force Act, 1913.

[6] Police Force Amendment Act, 1919

changed neither the role nor the duties of the Commissioner or other members.[1] The Minister's role remained. The Act was replaced again in 1959 and this is the current statutory authority. However, the act "... is silent on the functions and objectives of the New Zealand Police."[2] This legislation was notable for the removal of the reference to "Force" in its title.

The oath however,[3] has been used by Courts in deciding what are the lawful duties of a constable. This approach is necessary when determining when a constable has been obstructed in his lawful duties. This is a specific breach of a criminal statute.[4] The oath binds the constable to see the the Queen's peace is kept, to prevent offences, and to discharge other lawful duties. This is taken to mean that the constable is answerable to the Crown through the law.

The other duties placed on the Policeman are found

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[1] Police Force Act 1947

[2] New Zealand Police Functional Review, 1982, para 5.6.

[3] Police Act 1959, Section 37.

[4] Summary Offences Act 1981 makes is a criminal offence to obstruct a constable in his lawful duty. The oath is used as a definition of that duty.

variously in statutes such as the Misuse of Drugs Act, Trespass Act, Sale of Liquor Act, Immigration Act, Wild Animal Control Act, Massage Parlours Act, Private Investigations and Security Guards Act, and the Children and Young Persons Act. The duties found in those enactments are usually concerned with the enforcement of rules of conduct or the welfare of persons at risk, particularly the latter. A statutory rule places duties on the individual policeman to comply with the internal instructions of the Police Department. The rules, known as General Instructions are contained in two volumes and are a total of 10 cms thick.

The level of detail of instructions in these books is a reflection of the discipline existing in the New Zealand Police. Every problem has a related policy developed from experience. Many of these instructions are concerned with practical application of the law, or interacting with external organisations. But a major preoccupation is with public acceptability of police practice. A sample page out of the thirty pages of contents of the General Instructions is reproduced as Appendix 2. The instructions range from policy on arrest discretion, action against armed offenders, protection of archeological sites, hair styling, aliens and burglar alarms.

The complexity and variety of these policies are reflected in the internal examinations for policemen. The three

hour examination for 'Police Administration' is based on a study guide containing 78 separate topics.[1] The complexity and variety also reflects the Commissioner's role in supervising and approving the development of the policies before publication. Finally, the volume of information illustrates the difficulties any one policeman will have in ascertaining what is currently acceptable police action in other than routine activities. Accordingly the Commissioner is answerable for the actions of his staff in circumstances where they will have difficulty knowing the rules.

There is an inference in many legal sources that the duties of a state institution are the accummulation of the duties of its members.[2] Clearly this is not an adequate description as it does not account for the majority of the activities of Police staff. It does not seek to explain those activities which support the existence of the Police as a corporate body with its own aims separate from its community function. Neither does the inference account for the absence of responsibility by the Police as a department of state for other than a few statutes. The two that it does have responsibility

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[1] New Zealand Police Functional Review, 1982, para 4.45.

[2] R v Metropolitan Police Commissioner, ex parte Blackburn, (1968), 1 All E. R. 769.

are concerned with narrow issues such as the Police Act that legally define its existence and the Arms Act which is concerned with the control and use of firearms. The statutes that most shape the activity of the Police are the Crimes Act, and Summary Offences Act which are administered by the Department of Justice. The Police have a lesser involvement in the Transport Act and its regulations which are administered by the Ministry of Transport.

It was recommended in 1982 by an inquiry staffed by experienced civil servants that "the legislation governing the activities of the Police be reviewed with a view to defining clearly their role, functions and responsibilities"[1] The present Deputy Prime Minister Geoffrey Palmer said in a public lecture a year before his election to the Treasury benches that "...parliamentary scrutiny of Police issues is low."[2] He also described the Police role as "custodians of what is invariably known in the political field as the law and order issue. The community has a well developed sense of order and tends to believe in the need to be severe on those who offend

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[1] New Zealand Police Functional Review, 1982, para 5.8 [2] PALMER, Geoffrey, MP, Police In New Zealand, Public Lecture at Victoria University of Wellington, July 1983.

against it."

To further examine the functions of the Police in New Zealand, a useful approach is to quantitively examine what the Police do. From that, a qualitative review will focus on those activities which are important in the relationship between the Commissioner and the Minister. This is reviewed in Section 3 of this Chapter.

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2. THE LEGAL RELATION

The relationship between the judiciary and the police is central in our study of the relationship between the police and the executive as the concept of independence of the police from the executive is founded largely on the duty of the police "to the law."[1] The judiciary have the role of interpreting the law and making judgements on its consequences.

In the english legal tradition shared by the states mentioned in this study, the law can be usefully divided into three parts. Common law is the body of accepted rules that preceded legislation and has not so far been abrogated by legislation. Statute law is the body of rules consciously enacted by sovereign or delegated legislatures. Case law is the body of rules that has been stimulated by inadequacies in the first two and revealed by the judiciary. The latter is based on precedent, ie previous judicial decision.[2] The power of judges to reveal what was previously not known has a mystical air but is justified as a rational extension of previously known

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[1] R v Metropolitan Police Commissioner ex parte Blackburn, (1968) 1 All E.R. 763.

[2] Geldart, W. M., (1959),Elements Of English Law, OUP, London pp 7-20.

and accepted or at least unchallenged decisions.

In the development of the constitutional conventions concerning the relationship between the executive and the police, legal precedents are depended upon to give a clear understanding of the issues. It is not coincidental that the appointment of members of the judicicary to head the several commissions that have re-examined such issues have resulted in the confirmation of the significance of precedent.

There is a ranking of Courts which ranks their decisions. The decision of a superior court is binding on all inferior courts. The decisions of the highest court of all, the Privy Council in London, is binding on all inferior courts. The decisions of a District Court in New Zealand is not binding on any other Court, but is pursuasive of other District Courts.

However, the use of precedent is not without its difficulty. Firstly it assumes that there is a valid comparison between the present issue and the precedent. A study of the oft quoted case on the power of the executive to direct the police shows that in very few instances were the courts concerned with the issue of the accountability of the police to the executive. The suits were usually seeking redress for civil wrong such as a tort or in one case the non-payment of local

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[1] Coomber v Justices of Berks, (1883), 9 A. C. 61.

government tax for a building used by the police and the courts.

One could postulate that for the accountability of the police to the executive to be an issue, the dispute would need to be between the Commissioner and the executive. This has occurred on two recorded occasions. In 1956, the Chief Constable of Nottingham, Captain Popkess, was asked by the Nottingham City Council for a report on Police investigations into corruption of the Council and its staff. Captain Popkess refused and was dismissed. He was reinstated by the Home Secretary. This had the effect of reducing the executive power of local government and increasing the power of central government but again saying little about the executive power to direct the police. This case was not referred to the Courts for resolution. One such case that did reach the judicial system was the dismissal of Commissioner Harold Salisbury by the Premier of South Australia in 1978. There had been conflict between the two concerning security police functions by the South Australian Police. There the law was sufficiently different for the judiciary to find in favour of the Premier ruling that the Commissioner could not be independent of government in a way that the judges themselves were.

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[1] Report by Justice Rona Mitchell, Royal Commissioner on the dismissal of Harold Hubert Salisbury, 30 May 1978.

In the development of precedent, judges ostensibly try not to create new law. It is not intended that precedents "have the arbitrary character of legislation", but it does lay claim to certainty, growth, detail and practicality.[1] Conversely it admits to rigidity, illogicality and complexity. A recent biographical note of Lord Denning, Master of the Rolls, said of him "...as a result of his example, many Judges now strive to find ways to achieve justice where they once acquiesced in injustice. They have seen that new times require new laws and that in the process of this change, principle must not be enslaved by precedent."[2] To avoid a binding precedent in one decision Lord Dening is reported as saying "...a lot of water has flowed under the bridge."[3] To distinguish a decision concerning a paint shop in an earlier case he commented that the precedent would perhaps be binding if there was another such paint shop but not for anything else.[4]

Secondly, precedent presupposes the judges decision was

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[1] Geldart, W. M.,(1959),Elements Of English Law, OUP, London p 13.

[2] Grant, Anthony, Lord Denning: An Appreciation, New Zealand Law Journal, December 1983, p 358.

[3] Bremer Vulkan v South India Shipping, (1978) All E. R.

[4] London Transport v Betts, [1958], 2 All E. R. 655.

carefully considered and relevant to the specific issue. Where it is clear that the precedent includes comment on principles only peripheral to the issue, then they are considered to be pursuasive but not binding. [1]

The legal precedents fall perhaps uneasily into two general areas. Firstly they establish that the relationship is not that of master and servant, and secondly that while the courts will review Police decisons they are loathe to direct the Police in any detailed or pragmatic way how their duty to the law should be discharged. In any study of the precedents they should be considered in chronological order to retain the logic of their development.

In this country the precedents of the United Kingdom and Australia are followed to the extent that they have been tested. The evidence available suggests that the New Zealand Police have followed the precedents. Evidence of this is discussed in Chapter IV as part of the New Zealand experience. Interviews with previous Commissioners and comment from the present Commissioner support the view.

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[1] Footnote: When reading a report of a decision, the reader must first separate the law from the facts at issue. Then words used by the judge in passing (obiter dicta) must be separated from the decision on the legal issue (ratio decidendi.)

In the United Kingdom in 1930 a local authority was sued by a man claiming to have been falsely imprisoned by a local police officer.[1] The judge decided that Police Officers did not act as "servants" of the Oldham Corporation who employed them, so the Corporation could not be held liable for damages for false imprisonment arising from the acts of the police officers. The judge based his decision in part on precedent.

> "...the powers of a constable, ... whether conferred by common law or statute law, are exercised by him by virtue of his office, and cannot be exercised on the responsibility of any person but himself... A Constable therefore, when acting as a peace officer, is not exercising a delegated authority, but an original authority."[2]

The judge decided that the local authority had no power to control the constable's execution of his office, since the relationship of master and servant cannot exist between local authority and the Police.

In a 1955 Australian decision the Privy Council followed

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[1] Fisher v Oldham Corporation [1930] 2 K. B. 364.

[2] Enever v The King, [1906], 3 C. L. R. 969.

[3] Attorney General of N.S.W. v Perpetual Trustee Company [1955] A. C. 47

and approved the judges decision in Fisher's case (supra) when the issue was whether a Police Officer was a servant of the Crown in such a way that any action could be founded on the loss of his services. Viscount Simonds said

> "There is a fundamental difference between the domestic relationship of servant and master and that of the holder of public office and the state he is said to serve. The Constable's falls within the latter category. His authority is original, not delegated, and is exercised at his own discretion by virtue of his office. He is a ministerial officer exercising statutory rights independently of contract. The essential difference is recognised in the fact that his relationship to the government is not, in ordinary parlance, described as that of servant and master."

Independence from politicial consideration had been emphasised in 1925 when a corporation attempted to get an increase in police services to overcome a problem they were experiencing. They sought an order from the Court directing the Police to provide specific services. Lord Carson said:

> "It is not in the power of the executive, through the Secretary of State or otherwise, to limit the rights of the subject in obtaining such protection for life

and property and that any attempt to do so would be absolutely unconstitutional and illegal."

On the same issue Lord Blanesburgh said "The nature of the protection to be supplied must be primarily left to (the Police) to decide." Viscount Cave added "... there is an absolute unconditional obligation biding the police authorities to take all steps which appear to them to be necessary for keeping the peace, for preventing crime or for protecting property from criminal injury."[1] The legal relation between the Commissioner and the executive was discussed at length by Lord Denning, Master of the ROlls, together wth Lord Justice Salmon in 1968 when Blackburn asked the Court to direct the Commissioner of the Metropolitan Police (London) to rigidly enforce the gaming laws.[2] Lord Denning said of the office of Commissioner of Police:

> "His constitutional status has never been defined either by statute or by the courts ... (but) like every Constable in the land, he ... is, independent of the executive. He is not subject to the orders of the

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[1] Glasbrook Bros Ltd v Glamorgan County Council, [1925] A. C. 270

[2] R v Metropolitan Police Commissioner ex parte Blackburn, p 769.

> Secretary of State, save that under the Police Act (1964) UK) the Secretary of State can call on him to give a report or retire in the interests of efficiency. It is the duty ... of every Chief Constable to enforce the law of the land. He must take steps to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone save the law itself. No Minister of the Crown can tell him that he must or must not prosecute this man or that one ... The responsibility for law enforcement lies on him. He is answerable to the law and the law alone."

Lord Justice Salmon in the same decision similarly said:

> "Constitutionally it is clearly impermissable for the Home Secretary to issue any order to the Police in respect of law enforcement..."

However his Lordship considered that the Commissioner was not immune from any form of control for he continued:-

> "... the police owe the public a clear legal duty to enforce the law ... (in the) event ... of the Police failing or refusing to carry out their duty the Court

would not be powerless to intervene. For example, if as is quite unthinkable, the Chief Police Officer in any district were to issue an instruction that as a matter of policy the police would take no steps to prosecute any housebreaker, I have little doubt that any householder in the district would be able to obtain an order of mandamus."[1]

The only New Zealand judicial decision on these issues originates in the Magistrates Court. The Crown suggested it was not vicariously liable for a Constables acts of assault and false imprisonment because Police Constables were not servants or agents of the Crown. The Magistrate commented that

"...the position of the Commissioner of Police in New Zealand is comparable in status with that of a Metropolitan Police Commissioner in England."

He then quoted Lord Denning judgement in Blackburns case (supra) and continued

"... a policeman who is a Crown servant when he is

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[1] footnote: Mandamus is a Court order commanding a body or person to perform their public duty. It can be requested by anyone with sufficient legal interest and is entirely at the discretion of the Court for th instruction to be withdrawn.

> exercising many of his functions is not a Crown servant when he is exercising an independent discretion conferred directly upon him by the law, for example when he himself decides to make an arrest. Therefore the Crown would not be vicariously liable for a tort committed by him, viz. assault when making the arrest. While the executive have (sic) control over the Police in most matters it has no legal power over him in the exercise of a power such as making any arrest for at that stage he is a servant of the law although an officer of the Crown is the sole person who can uphold the law."[1]

Even though the Magistrate found that in making the arrest the constable was not a servant of the Crown, he held that the Crown Proceedings Act 1950, Section 6(3) deemed such an officer (of the Crown) to be a servant or agent of the Crown for the sole purpose of imposing vicarious liability on the Crown. Thus this decision turned on a statutory provision introduced to avoid the problems inherent in being unable to compensate citizens for the errors of police officers and other state employees who have some independence from the Executive.

This last decision is worthy of further consideration. It

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[1] Osgood v Attorney General, (1972), 13 M. C. D., 400.

is acknowledged that much said by the Magistrate was 'obiter dicta' and secondly that it is the decision of an 'inferior' court. Despite this, the Magistrate has introduced a fresh concept concerning the variable issue of the relationship between constable and executive. Sometimes the relationship is one of master and servant, and sometimes it is not. The latter occurs when the constable is exercising "an independent discretion." Secondly the Magistrate infers the executive have control over the Police in most matters. Clearly this lower court judicial officer is less convinced than his senior colleagues as to the independence of the Police. He also repeats a common theme of the precedents that the Commissioner's independence is analogous with the Constable's independence. As a legal principle it is questionable. As a management principle, it would be difficult to defend as the role of the Commissioner contains a substantial bureaucratic element. This is discussed in Section 3 below.

In drawing together these various threads of the revealed law it is important to draw the distinction between the governmental function of law enforcement, and the two institutions, the Police and the Courts who carry it out. Most governmental activity is an expression of a stated policy, modified by the bureaucracy necessary in carrying it out. Law enforcement is intended to be dominated by the law and

governments concern is with provision of the resource. As will be seen in Chapter IV, keeping the two separated is the problem.

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3. THE COMMISSIONER AS A PUBLIC OFFICIAL

A major consideration in the role of the Commissioner of Police in New Zealand is his position as the head of a government department. This section examines the bureaucratic load of the Commissioner and the effect that the command structures of the New Zealand Police can have on his options. It is concerned with what the Commissioner does rather than what the constable may do or what the Police as an organisation does. These other aspects are relevant only in the sense that the Commissioner must relate to them.

The head of a department of state is positioned at an important node of the governmental system. Through his office pass the significant communications between the department and the executive. He is not the only conduit as the informal systems of party, news media, lobbies and individuals can choose to bypass the bureaucrat. Most formal communication however does pass through his headquarters. Whether he can be personally aware of it is dependent on volume, technical obscurity, relevance and the other factors of the information overload problem.

An important concept referred to in the review of Minsterial responsibility for the Police is the separation of operational from administrative matters. This is a development of the concept that the constable exercises an original

authority answerable only to the law and it would be improper for anyone save the Court to intervene.

This arguement tends to ignore the reality of the constables position in a disciplined hierarchy of which the Commissioner is head. It also minimises the reality of the content of police operational activity. The analysis of records from a survey of field activity in Auckland in 1972 showed that the law enforcement stereotype was far from accurate. Some 34 per cent of the incidents attended involved crimes against the person or property. Another 11 per cent were concerned with street disorder. Community service involving mostly a visit from the Police with no sanction contemplated amounted to 30 per cent. Of the 4600 incidents surveyed, only 5 per cent resulted in arrests.[1] Analyses of more recent observation of the New Zealand Police are examined in Section 1 of this chapter and are consistent with the earlier study.

The separation of operational and administrative matters has not been satisfactorily delineated. This failure is not a result of a reluctance to do so but is a reflection of the imprecise nature of the problem. Most Police operations involve the use of resources. Supply of resource is plainly a matter of

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[1] GLYNN, J. F., (1975), The New Zealand Policeman, New Zealand Institute of Public Administration, p 43.

administration. In the discussion in Section 2 of the legal precedents there are few references to police activities that do not involve the legal system.

The budget of the New Zealand Police for the financial year 1983 - 1984 was $191,240,000. Some $3,500,000 in that period was spent on construction and purchase of buildings. The New Zealand Police own 979 houses for rental by staff. The 925 vehicles operated travelled an average of 34,600 Km each. In the same year there were almost 7 million queries of the database of the Wanganui Computer Centre.

The recruiting, training, supplying and management of this resource is a task large enough in itself to absorb a major segment of the Commissioner's time and requires a management structure to discharge the requirement. This is provided for in the National Police Headquarters over which the Commissioner has direct command. It has a staff of about 190 trained police staff and a similar number of clerical, support and engineering staff.

The Commissioner has two deputies who have responsibility for operational and administrative matters. The deputy responsible for operational matters has to assist him a senior staff officer responsible for 'Crime and Operations" and another officer attending to a policy development and review. 'Crime and Operations' encompasses most of the field work undertaken by the Police. 'Investigative Services' are an important part of the

Police function and have sections devoted to recruiting, training and support at a technical level. The latter includes the small forensic units such as fingerprints, photography and document examination. Drug investigation has become a speciality on its own. Routine monitoring of news media and community affairs is supported by public relations staff, crime prevention advisers and youth aid specialists. Support is also coordinated on a national basis for search and rescue, civil defence and firearms.

In the administration structure are two functional 'Heads Of', firstly 'Administration' and secondly 'Training/personnel'. Administration includes legal services, media liaison and liaison with the Ministers Office. Provision is made for a management services section that develops and monitors staffing levels, new equipment and new procedures. Police buildings are built and maintained. Budgets are planned, requested and monitored. Uniforms and vehicles are supplied. Clerical services are needed to support most specialist sections. Complaints against the Police are pursued. Staff are recruited, trained and supported.

Most of the staff appointed to these activities are functionaries carrying out routine procedures but their position near the centre of the organisation makes them important in the policy generation process.

Of course most Police staff are scattered around New Zealand with 1300 in Auckland, 830 in Wellington and 570 in Christchurch. They are distributed throughout sixteen districts, each being centred on a provincial centre.

Policemen in New Zealand have two separate employee organisations, the New Zealand Police Association which dates back formally to the first Labour Government and has almost 100% membership of constables and non-commissioned officers. The senior staff comprising the commissioned officers belong to the New Zealand Police Officers Guild with a membership of 220. Both organisations have regular communication with the Commissioner and their existence is expressly authorised by the Police Act 1958. Both organisations are active in proposing both staff welfare and police departmental policy. The Commissioner has a legal adviser with the specific responsibility of industrial relations. These consist mostly of negotiations over conditions of work since most other areas of employee group interest are served by other specialist sections within the Commissioners headquarters.

The Commissioner is at the apex of a tightly structured hierarchy. The policies generated at his headquarters or from the executive need be disseminated to the organisation. The command chain has up to eight links between the constable in Cathedral Square in Christchurch and the Commissioner in

Wellington. Several systems are used to assist the information reaching the 'shop floor.'

The major effort in communication is through a formal training system coordinated by a section in his headquarters. It begins with residential primary training of recruits over a period of six months. This is undertaken at the New Zealand Police College, Papakowhai, It has accommodation for 400. Staffing of the college is 38. Curriculum includes physical training and safe arrest techniques as well as lectures on law, investigation methods and the presentation of cases to the Courts. The time spent in this phase of training does not compare favourably with some northern hemisphere police services who spend as long on primary training as primary teachers do in this country.

Training continues when the recruit graduates from the College and begins street duty. Every five or six weeks, he or she will spend a day being refreshed on matters of current interest. For the first two years of service, this is accompanied by a correspondence course and testing The recruit completes this course before he is permanently appointed to the New Zealand Police. During his service, he will continue to receive both training at the Police College on specialist matters and training on routine or urgent concerns at his home station.

Existing policies and procedures and subsequent updates are maintained in a systems of manuals and circulars all of which have the force of law. The efficacy of this system is questioned by Warren Thompson[1] when he describes the "... two volumes of what are known as ... General Instructions and one volume on Police Practice for Constables - in all about 3000 pages of rules, instructions and admonitions covering quite minute detail ... these rules are manifestations of a desire to control behavior in the interests of bureaucratic efficiency (but) many of the rules are essentially useless. Police work is an enormously complex task with most situations being encountered being almost unique ..." His concern encompassed the uniqueness of the amount of authority devolving to the lowest level of the hierarchy. Most of a constables duties are discharged in the company of one other policeman. There can only be limited supervision of the majority of activities.

The most significant decision structure within the Commissioners ambit is the heirarchy at his headquarters. A rigid rank system positions all police staff in the pyramid so that authority and responsibility is well understood. It is not usual for police staff at the headquarters to wear uniform. This may have the effect of lessening the rigidity of the structure.

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[1] THOMPSON, Warren, Public Sector, Vol 6, No 1/2 July 1983

Commissioner K B. Burnside established a decision structure that involved all senior field commanders as well as senior headquarters officers. The Police Executive Committee[1] brought together the senior officers from the 16 Police districts and this format has been retained. It is not known how such a committee with apparently democratic forms can function in a hierarchy such as the Police. It has some of the forms of consensus decisionmaking and no doubt is a useful communication device downwards for the Commissioner. That it has survived two Commissioners since its inception suggests it has a useful function for him.

Routine communication with the Minister is a major consideration for the Commissioner. A junior commissioned officer was appointed in 1976 to be a liaison officer with the Minister's office. This appointment was to satisfy the new Minister's need for closer contact with his department. The liaison officer was to spend up to eight hours each week in the Minister's office, conduct some enquiries on behalf of the Minister and assist the Minister with reports received from the Police. Since that time, the description of the task as

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[1] Compare with the Justice Executive Committee referred to in ROBERSTON, John, (1982), Your Obedient Servant", videotape, University of Waikato, 50 minutes.

published in appointment vacancies has diminished to the point where it is a part time activity of the Commissioner's personal aide. It is the view of ex Commissioner R. J. Walton, that such communication needs be personal between Minister and Commissioner.

The appointment of a new Minister of Police presents the Commissioner with the task of establishing a relationship. The evidence tends to suggest this is very much a personal relationship shaped in all respects by the personality and competence of both politician and civil servant.

Commissioner K B Burnside said of this relationship that

> "1. On election that minister should be invited to Police Headquarters and briefed by the Commissioner, Deputy Commissioner, Assistant Commissioner on their span of control. Directors and other heads of departments should brief the Minister on their specific area of responsibility. The Minister should be provided with an organisation chart of Police Headquarters so that when he is being briefed he/she can appreciate where the member fits into the organisation.
>
> 2. It is the Commissioners responsibility to acquaint the Minister with the overall span of control, management and administration of the N. Z. Police.

and District control the Minister is then shown the sections he wishes to see followed by similar briefing and visits in Wellington District. The aim is to show the Minister the organisation of police in New Zealand. All aspects should be explained, ie Operation Rooms, C.I.B, Crime Cars, Enquiry Cars, Incident Cars, Beat Organisation, etc. Financial control including obtaining of funds may need to be included.

3. The main problems facing Police should be spelt out, eg Manpower, Crime Detection, difficulties in policing certain areas and aspects etc should be dealt with but care should be taken to ensure no one particularly uses the opportunity to advance his own "hobby horse."

4. Statistical records, Police Annual Reports, Organisation Charts, Police Brief Book ... should be assembled and supplied.

5. A friendly helpful liaison should be established between the Commissioner and the Minister. Rapport should be at the highest level but politics should be kept completely out. Responsibilities should be clearly defined, eg. No one can direct the Commissioner on what law to enforce or what law not to enforce. The word direct is the key at issue.

to enforce. The word direct is the key at issue. Sensible and reasonable co-operation must always exist. For example if disorder in public places is occurring the request of the Minister to clean it up is sensible. If one (government department) has temporarily not got the manpower to carry out their responsibilities, then a request by Cabinet through the Minister is reasonable and sensible. Generally speaking the control and organisation of the Police rests with the Commissioner, and it is the Ministers responsibility to provide the means to do it.

It is vital that a clear understanding exists between the Commissioner and the Minister about each ones responsibility. The understanding being that there should be no political interference in law enforcement including prosecution, discipline, transfers, and general policing policy etc.

Where public outcry is likely to ensue, eg closing a police station, then it is sensible to have the Ministers concurrence in the action contemplated.

Advice on press releases etc should be supplied. Releases should be prepared for the Minister in sensitive areas and the same sentiments apply to speeches.

> Cooperation in implementing Government policies should be followed. I always found them to be in accordance with the law and never impeaching the overall general policing policies of the New Zealand Police.
>
> The Metropolitan Commissioner of Police v Blackburn and the South Australian Royal Commission on the Ministers right to direct the Police apply bearing in the mind that the Police Acts in Australia provide the Minister with wider authority than does the New Zealand Act."[1]

The Minister for much of the period of Commissioner Burnside's appointment was the Hon Mick Connelly. This Minsters's recollections of communication with the Commissioner centred around a weekly Monday meeting where matters of mutual concern were discussed. The discussion was free ranging and both the Minister's and the Commissioner's concerns were raised. One such example of subject was the security of the building site at the University of Canterbury. The Minister did not feel

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[1] This source is given in its entirety as a useful expression of one Commissioners personal view. It is essentially unedited transcript of handwritten notes. It was proferred during an interview at Wellington, September 1984.

it inappropriate to discuss the usefulness of stationing a policeman in a site hut. The Commissioner's response that the manpower cost was too high was accepted by the Minister. He accepted the Commissioner's right to make such decisions.

Thus the Commissioner functions as the head of a large but tightly organised command structure. It involves the daily work and interaction of a significant number of people routinely dealing with a significant number of essentially different tasks. A sensitive and flexible response from the organisation at the headquarters level is unlikely due to the bureaucratic inertia. Similarly, effective communication with the organisation at the 'shop floor'is unlikely. Both these limitations limit the Commissioner's options when responding to community or political initiatives.

Chapter IV

1. RELATIONAL CONFLICT

This section examines the conflict that exists between the Commissioner's relationship with the Minister of Police and the Commissioner's relationship, through his department, with the judiciary. Within this conflict lies the confusion surrounding the accountability of the police and its replacement by direct accountability to the electorate.

Most institutions can be identified by their perceived role. There is usually a widely shared concept of what is done by the institution, how it is done, its limits of acceptable activity and how the institution relates to others in the social structure.

These relationships help define the purposes and limit its power. The Police as an institution is no exception, and while we may have difficulty in defining its role (see Chapt I) it is useful to examine its relationships with other major institutions with whom it interacts. The nature of these relationships is variable and reflects the strength of the influences that flow through them.

In this study there are two major institutions identifiable whose relationships with the Police help in the understanding of the relationship between the Commissioner of Police and the Minister of Police in this country. They are the

Government Executive of which the Minister is part, and the judicial system, the guardian and administrator of "the law". While my concern is with the bilateral relationship between the executive and the police, my thesis is that the legal relationship cannot be adequately described without introducing the judicial processes, and that the legal relationship is neither a sufficient nor a satisfactory explanation of the dynamics.

The legal conventions surrounding the relationship between Police and executive have been examined in Chapt III above. What the precedents and conventions do not account for adequately is the complex nature of the institutions. The law is often portrayed as an unchanging body of knowledge containing absolute truths. Confidence is expressed in rules intended to liberate mankind or at least sections of it from oppression of all sorts. It is often overlooked that the Constitution of the United States of America written in the 18th century is still being interpreted anew 2 centuries later. It took until the middle of this century to outlaw racial segregation. However the U.S. experience of the judicial system varies from our own in that a large proportion of the judges in the former system are elected to office in a popular vote. Prosecutors are similarly selected. This suggests a fusion of the legal and political roles. In comparison in New Zealand, and many countries like it

such as Australia, Canada and the United Kingdom, the two roles are kept scrupulously separate. Judges in the latter group are called upon to be independent arbiters for a range of disputes that are uneasily resolved any other way. Electoral irregularities, industrial relations and civil disobedience are all issues that depend on the legitimation claim of the judiciary of fairness and independence. Acceptance and legitimation of their judicial decisions depends on their perceived independence from the litigants. They are not expected to not have political views of their own yet they are expected not to utter them or permit those beliefs to unfairly influence their judicial decisions.

Involvement in the police executive process can be seen as detrimental to the judicial task. This was raised during Lord Scarman's inquiry into the Brixton disorders but was not pursued. It is not uncommon in England, Australia and New Zealand for judges to be appointed as Commissioners to inquire into a a wide range of issues. The appointments are based on the premise that judges have the intellectual skills and experience to evaluate evidence. They can be objective in using rules that have evolved in a system of enquiry that is biased against the state to reduce the liklihood of an innocent being adjudged guilty. This is a simplistic model and applies to the criminal enquiry where the interests of the state are pitted against the

interests of an individual. Where two citizens are pitted against one another, the decision is based on a balance of probabilities and determination of facts is left to a lay jury. The more convincing justification is their self discipline and independence

This system is legitimated by the selection of judges from men who are accepted as being impartial in their decisions and who remain aloof from 'secular' life once appointed to the Bench. A Judge who exhibits the usual human foibles is an embarrassment to his fellows. This problem is illustrated in a commission report where the Commssion itself becomes the litigant. Justice Mahon's experience with the Erebus Commission led him to the Privy Council. In South Australia, the sacking of Harold Salisbury by Prime Minister Dunstan led to an inquiry of Justice White. This early inquiry was widely disputed and had to be followed by a Royal Commission chaired by Justice Mitchell.[1] The risk lies when the findings are challenged by a group with political influence. The judge is then at risk of being identified as being an establishment representative rather than an arbiter. Then the relationships are seen in political terms, that is to say there is conflict between the political

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[1] COCKBURN, Stewart, (1979), The Salisbury Affair, Sun, Melbourne.

relations.

What then is the difference in the meaning of political and legal relations? If politics is about power, law is the accepted and codified manifestation of politics. Todays politics become tommorrows laws. The longer a law is in place, the greater its legitimation and the lesser its political element. The law is knowable even if it needs re-interpretation from time to time in the wake of changes of values. It is feasible to know the law ahead of time and be confident that it will not change in the forseeable future. It has its own dynamics but its structures and processes converge towards the status quo. It is conservative by definition. It is the embodiment of agreed rules and prescriptions. Conversley, politics is concerned with those matters that are not widely agreed upon. "The social role of the politician is to promote compromise and provisional agreement among the contending groups of the associational society." [1]

It can be seen that the inconsistencies of the traditional view of the independence of the police and the democratic conventions of accountability are not explained by

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[1] WILSON, Wilson, and KOLB, William L.,(1949), Political Organization, in Sociological Analysis, Harcourt, Brace and World, New York, p 519.

the conventional theories of either judges or politicians. This would seemingly leave a vacuum. Michael Brogden[1] writing of the Police in england describes them as occupying the "amorphous social space between local and central government." This does not apply in New Zealand however he goes on to refer to the complexity and opacity of the political relation.

Why has this apparent anomaly survived? "It is not in the interest of the politicians to become involved" said ex-Commissioner R. J. Walton.[2] "The 'electorate' from which the police derived their mandate was the public as a whole, all the time, not just most of them for a three year term" suggests Sherwood Young in his history of the Wharf Strike of 1951.[3]

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[1] BROGDEN, Michael, The Police: Autonomy and Consent, Academic Press, London, p 1.

[2] WALTON, R. J., (1985), interview 24 February 1985.

[3] YOUNG, S. I., The Activities and Problems of the Police in the 1951 Waterfront Dispute, MA Thesis for History, University of Canterbury, 1975, p3.

2. THE NEW ZEALAND EXPERIENCE

This paper has reviewed the origins and traditions of the Police in New Zealand by tracing both historic development and the legal precedents inherited from England. Despite the different constitutions in England, Australia, and New Zealand, the experiences have been very similar. This would be consistant with a police institution that is in a significant way disconnected from the formal political accountability experienced by most Departments of State.

A study of the functions of the Police in New Zealand begins to account for the uniqueness of the relationship between the Police and the consumer which would allow that disconnection to exist by replacing it with a form of direct accountability.

The legal relation is discounted as an effective accountability mechanism as it is both unable and unwilling to conciously involve itself in the public issues that are the turning points of institutions such as the Police. It is known from sources that while the Police in New Zealand follow the conventional legal view, the Police administration has been aware of the need to temper that view with consideration for real events. The inadequacy of the legalistic view is tacitly acknowledged.

The preoccupation with the law has reflections in the thinking of policeman. A study of the graduate degrees amongst

the small proportion (2.3%) of police graduates in New Zealand shows that 17 percent are law degrees. However, almost all (90 %) of those law graduates have been promoted, ie, they are senior staff. The inference is that tertiary education in law is undertaken after joining the Police rather than before recruitment. It is also reflected in the comment of Geoffrey Palmer on the role of the Police in the legislative process.[1] The Statutes Revision Committee tends to be dominated by Members of Parliament with tertiary education in law. Professionally qualified policeman are seen as being more effective in that company than the senior police officers who ostensibly formulate and enunciate policy on behalf of the Police Department.

There is no doubt that the Commissioner has a political role. What is avoided is partisan politics. However it is significant that a manual of statistics prepared in 1984 for briefing of the new Minister, the Hon Ann Hercus, takes care to differentiate changes in budget and staffing levels where there has been a change of government. This presumably ensures that there is no misunderstanding as to which Government provide which level of resource.[2] The public activities of field

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[1] PALMER, Geoffrey, The Legislative Process and the Police, public lectures, Victoria University of Wellington, 27 July 1983

[2] New Zealand Police, Digest of Statistics, 1984.

commanders can compromise the careful step of the Commissioner. The remarks of the inimitable Gideon Tait, District Police Commander in Auckland during a period of controversial team policing strategies called "Task Force" are indicative of the resistance the Commissioner can experience from his senior field officers.[1] This officer's flattering recollections are recorded "in a book I do not admire" comments the Deputy Prime Minister and Minister of Justice, the Hon Geoffrey Palmer. Similarly, the recollections of Senior Sergeant Ross Meurant, deputy commander of the controversial 'Red Squad', of resisting or ignoring policy directions from the Commissioner during the divisive times of the Springbok Tour, 1981, illustrate the difficulties of effective command in the context of confused community politics.[2]

The mechanics of a relationship can indicate its utility to the participants. Commissioner K. B. Burnside met Police Minister The Hon. Mick Connelly, each Monday before Cabinet. This Minister had been appointed during the period of Commissioner Angus Sharp and had been briefed by him. These

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[1] TAIT, Gideon, (1978), with John Berry, Never Back Down, Whitcoulls, New Zealand, p 168.

[2] MEURANT, Ross, (1982, The Red Squad Story, Harlen, Auckland, p199.

meetings covered all matters of mutual interest. The Minister recalled the Commissioners as having a good understanding of the problem. The Commissioners understood the political dangers for Government. Many solutions to operational problems experienced by the Police involved the use of resources. The resources necessary to meet a difficulty were always at issue as a consequence of these discussions.[1]

Commissioner Burnside's recollections of communication with the Minister centred around the weekly Monday meeting. The discussion was free ranging and both the Minister's and the Commissioner's concerns were raised. One such example was the security of the building site at the University of Canterbury. The Minister did not feel it inappropriate to discuss the usefulness of stationing a policeman in the site hut. The Commissioners response that the manpower cost was too high was accepted by the Minister. He accepted the Commissioners right to make such decisions despite the fact they did not compromise the law but were concerned rather more with resources and their efficient use.

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[1] These comments were made during an interview with the Hon Mick Connelly in Jun 1984. In a letter to the writer dated 15 March 1984, he said he achieved a reasonable working knowledge of the Police by the time of the change of Government in 1975.

Further illustrations of the relationship is the letter file reproduced as Appendix 1. The file represent "dissatisfied customers" in the words of the Minister. One letter requested a meeting to include the Minister of Maori Affairs on the subject of policing techniques by the unit in Auckland known as the "Task Force" Several letters suggested appeals where Court sentences were inadequate in the eyes of the Minister. In November 1974 the Minister asked whether the Police could help get a liquor permit (issued by a Licensing Committee) for an Old Peoples Christmas function.

The range of subjects in this file, the least important of the Ministers records is indicative that he wished to be involved in the operational decisions of the Police. Many of the decisions would necessarily be long after the initial events, but he did not hesitate to recommend appeals where he thought sentences were inadequate. His request for the Police to facilitate the issue of a liquor permit could be seen to have been unwise, involving as it does a quasi judicial body. Yet the subject and tenor of the letter is consistent with the description provided by this Minister, and by Ex-Commissioners, K. B. Burnside, and R. J. Walton. The relationship is a personal, commonsense one, where the Minister always recognised the professional competence of the policeman, and they mostly acknowledged the Ministers political acumen.

The appointment of the Hon Ben Couch as Minister saw the introduction of the liaison officer. This apparently did not provide the necessary personal contact between Commissioner and Minister and steadily declined in significance from its inception.

The replacement of the political accountability of the Police to the Executive in the strict sense by direct public accountability warrants further scrutiny. The mechanism does not have direct feedback to the policy makers and can be discounted on those grounds. However, the principle is consistent with my thesis on the replacement of the legal relation. Much activity in the Commissioner's headquarters is related to direct and indirect community contact, either through schools, service organisations, or the news media. The Police are a high profile profession through the media coverage given to the community crises the Police are ordinarily involved in. Questionable behavior tends not to go unnoticed for very long. The internal general instructions reproduced as Appendix 2 are indicative of the affect of publicity on the detailed policy directives of the Police.[1] The decision to deny the Prime Minister access to

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[1] The policy on arrest of woman with small children was developed following an error of judgement during one such arrest.

reports on Colin MOYLE, former Minister of Agriculture, were in the full glare of publicity of which the Deputy Commissioner Walton was very mindful. Commissioner Burnside returned from leave so they could face the Prime Minister together.

The Heylen Poll, indicative of majority support accorded the Police in New Zealand, is always a source of comfort to the Commissioner and would tend to discourage any politician from being seen to oppose the professional expertise of senior police officers.[1] "Politicians reflecting the sentiments of the community frequently defend the values implicit in the concept of law and order. They have ahabit of asking for more Police and more community support for the Police. It often ends up in a sort of auction about who supports the Police the most" comments Geoffrey Palmer.[2]

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[1] Heylen Poll has consistently registered approval for the Police in New Zealand, usually second only to the medical profession. Poll recorded 13 June 1965 showed 64% had full trust in police. Poll in 1981 just before the Springbok Tour recorded 54 % and second to medical profession. Heylen Poll recorded in Christchurch Star.

[2] PALMER, Geoffrey, The Legislative Process and the Police, address in public lecture series, Victoria University of Wellington, 27 July 1983, p 1.

Yet the political accountability and judgement can fail. Pursuit of the "Overstayers" generated a great deal of public debate and concern. The motivations are none too clear though the reference in the special Police report refers to a belief that cooperation with Government would assist in the next resource negotiation.[1] The suggestion at first glance seems somewhat base, yet it is consistent with the Hon Mick Connelly's recollection of discussions about special Police operations. It is also consistent with the views of Commissioner Burnside recorded in Chapter III as being a reasonable request. What was not consistent was the enthusiasm shown in undertaking another Department's responsiblities without a contemporaneous increase in resource.

An issue such as the 1981 Springbok Tour finally illustrates the problem for the Police when their mandate is not pervasive of the whole community. When influential political groupings take a different stance, the Police can no longer call upon their traditional support. An issue that straddles the community is a problem.

Resource management is no more difficult than when

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[1] Police Enforcement of Immigration Act 1964, at Auckland. October - November, 1976. Report Of The Inquiry By Chief Superintendent W. R. Fleming and Superintendent R. P. Silk.

attempts are made to trim budgets by closing Police Stations that do not justify the use of scarce Departmental resources. Despite the judges admonition that it is a Commissioner's prerogative to station his men,[1] there is no doubt that it is the practice for the Minister to approve closures because of the political ramifications of removing the symbol of policing from small, often close knit rural communities.

The Hon Ann Hercus, Minister of Police, indicates the Labour Government will consider a Parliamentary Select Committee to consult on Police and community concerns.[2] At the same time the present Commissioner reports that he has asked his legal advisers to review their opinions as a result of the views expressed by the Geoffrey Palmer [3] and Gordon Orr.[4]

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[1] R v Metropolitan Police Commissioner ex parte Blackburn, (1968), 1 All E. R. 763.

[2] letter dated 22 August 1984, from the Hon Ann Hercus.

[3] PALMER, Geoffrey, (1) The Legislative Process and the Police, public lecture , Victoria University of Wellington, 27 July 1983, and (2) The Accountability of the Police, a paper deliver to the Police Executive Conference, 21 June 1984.

[4] ORR, Gordon, Police Accountability to the Executive and Parliament, public lecture, Victoria University of Wellington, July 1983.

These latter initiatives are indications that both Government and the Commissioner are aware of the inadequacy of the conventions. The new Minister is searching for a constitutional political solution while the Commissioner looks for a constitutional legal opinion.

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The Hon. Ann Hercus, Minister of Police
The Hon. Michael Connelly, QSO
Commissioner K. O. Thompson, LVO, QPM.
and his staff at Police Headquarters.

Appendix 1

Ministers Letter File: Commissioner

Date 1974	On Behalf	City Locality	Request or Recommendation	Subject
Jan 16	self	NR	Query re statistics	Drug Abuse
"	Time	NR	Media report referral	Media
"	O.S.	NR	Draft letter rewrite	NR
Jan 17	self	Tapanui	Police establishment	Staffing
Jan 23	Alert	NR	Media report referral	Drug Abuse
Jan 28	self	NR	Request review decision Hop Beer	Crime
Jan 30	self	NR	Priority Committee representation	Staffing
Jan 31	J.	NR	Reqest review decision child molested	Crime
Feb 5	self	NR	UK legislation referral	Drug Abuse
"	self	NR	Police cars, speed fuel reductions	Equipment
"	media	NR	Travel to Australia by convicted criminals	Crime
Feb 7	self	NR	Statute Review, Unlawful Assembly	Crime
Feb 11	M.E.E.	Sumner	Complaint against Police	NR
"	E.	NR	Review Treasury error	NR
Feb 12	self	NR	Referral	NR
"	I.H.	Naenae	Complaint re Neighbours	NR

Date 1975	On Behalf	City Locality	Request or Recommendation	Subject
Feb 15	Bailey	Heretaunga	Upper Hutt Police Station	Buildings
Feb 15	self	Christchuch	Opens of Police Station	NR
Feb 19	self	Hamilton	Appeal re Court decision Rape	Crime
Feb 22	Bailey, MP	NR	Query re cells Upper Hutt	Building
Feb 22	self	Upper Hutt	Upper Hutt Police Station	Building
Feb 25	self	NR	Media report referral	NR
"	Minister of Justice		Letter draft required Assaults on Police	Crime
Feb 26	self	NR	Deadline reminder	Annual Report
Feb 27	self	NR	Civil Defence Police	NR
"	self	NR	UN funds	Drug abuse
"	W.	Christchurch	Query why accomplice was not prosecuted	Crime
Mar 5	self	NR	Media report referral	Drug Abuse
"	self	NR	Civillian staff ceilings	Staffing
Mar 6	IJS	Kirwee	Father suspects homicide in sons death	Crime
Mar 19	self	Hornby Christchurch	Speech notes for football club opening	NR
Mar 21	self	Khandallah Wellington7	Query delay, police Housing	Buildings
"	self	NR	Minsters opinion on farm accidents	Statute law

Date 1974	On Behalf	City Locality	Request or Recommendation	Subject
"	self	NR	Letter draft too abrupt	NR
Apr 4	self	NR	Bill referral	NR
"	self	Christchurch	"SpeakUp Campaign" telephone services	Equipment
Apr 9	self	NR	Media report referral	Media
Apr 10	M.Rata	NR	Discussion with Maori Affairs re J Teams	Staffing
Apr 11	self	NR	Employment of Security Officers	NR
Apr 17	self	NR	Query crime statistics on pillaging	Crime
Apr 18	self	NR	To attend Police College graduation	
Apr 30	self	Christchurch	Inadequacy of sentence of child rapist	Crime
Apr 30	self	NR	Query drugs/crime relationship	Drugs abuse
May 2	self	London	Referral Metropolitan Police Annual Report	NR
May 14	self	NR	Arms Act review, use of pistols by tellers	Statute law
May 17	self	Wellington	Bistro, Royal Oak Hotel, young girl patron.	Crime
May 17	self	NR	Patronage of motor cycle Club	
May 20	Jockey Club	Canterbury	Riccarton Racecourse, Security guards	Crime
May 21	self	Christchurch	Lawyers and media	Media
"	self	NR	letter draft re Police guarding NZR cash escorts	Staffing

Date 1974	On Behalf	City Locality	Request or Recommendation	Subject
May 29	self	NR	Advice on news releases	Media
Jun 10	self	NR	Advice	Buildings
Jun 11	self	NR	Recommends Commr and Asst Commr appointments	Staffing
Jun 12	self	NR	Transfer of title of historic property	Buildings property
Jun 14	self	Christchurch	Query, wording, Speakup Campaign	Media
Jun 14	self	Auckland	Police to print multilingual forms	Crime
"	self	London	Media report referral re pillaging	Media
Jun 19	self	NR	Recommends appeal	Assaults
Jun 21	County Chairman	Waitemata	Town Plan/ Police Participation	Planning
Jun 25	DBG	NR	Information re applicant	Police Recruit
Undated	self	NR	Supports amendment, assaults on Police	Statute law
Jul 2	Police Assn	NR	Draft reply needed	Assn/ Guild
Jul 10	self	NR	Suggests appeal	Drug abuse
Jul 17	self	NR	Publishing newsletter	NR
Jul 23	self	NR	Police to make TV film	Drug abuse
Jul 26	self	NR	Support for law and order campaign South Island	Media

Date 1974	On Behalf	City Locality	Request or Recommendation	Subject
Jul 30	self	NR	Requests drug abuse statistics	Drug abuse
Jul 31	self	NR	Arms amnesty information to womens organisations	Crime
"	self	Carterton	Review staffing levels	Staffing
Aug 2	P	NR	Recover costs	Local Policing
"	self	NR	Police in Territorials	Defence training
Aug 7	self	NR	Request for major crime statistics	Crime
"	self	NR	Police checks of stores of explosives	Explosive
"	self	NR	Review batons, media query re PR 24 batons	Equipment
Aug 9	self	NR	Commissioner to write to media re homosexual laws	Media
Aug 12	self	NR	Requests for manual of statistics update	Crime
Aug 13	self	NR	Children & Young Persons Bill, unexecuted warrants	Statute Law
Aug 14	self	NR	Strategy proposal	Drug abuse
"	self	NR	Police to examine magazine for indecency	Statute Law
"	KB(MP)	Kaiapoi	Delegation from Kaiapoi local authority	Local policing
"	self	NR	Briefing re Statute Revision	Statute Law
Aug 26	GA(MP)	Christchurch	Policing of Cathedral Sq	Local policing

Date 1974	On Behalf	City Locality	Request or Recommendation	Subject
Aug 30	M.S.	Christchurch	Recommends recruit	Staffing
"	self	Islington Christchurch	Public assistance to Police training	
Sept 2	NR	North Shore	Referral of pornographic wristwatches	Local Policing
"	NR	NR	Reply to newsmedia	Media
Sept 3	NR	NR	Reply re news media	Media
Sept 6	self	NR	Appreciation for Kirk funeral arrangements	
"	self	NR	Suggestion time for Police	
Sept 10		Auckland	Suggests Police advise Security companies	
"	NR	NR	Information re Kidnapping	Crime
Sept 13	Radio Aust	NR	Media referral	Drug Abuse
Sept 13	self	NR	Review strategy re prescription frauds	Drug Abuse
"	Muldoon	NR	Requests information	NR
Sept 18	NR	NR	Requests information re police housing	Buildings
Sept 19	Mihaka	NR	Complaint re Police insults	Local Policing
Sept 20	NR	NR	Arms amnesty, suggests bounty	Firearms
Sept 21	self	NR	Requests information regarding arms replicas	Firearms
Sept 30	self	NR	Style in memorandums	Admin
Oct 3	self	NR	Media referral	Drug

Date 1974	On Behalf	City Locality	Request or Recommendation	Subject
"	self	NR	Memo draft 'why Task Force?'	Local Policing
Oct 8	self	Hong Kong	Information referral	Drug Abuse
Oct 14		Christchurch	Complaint re policing technique	Local Policing
Oct 18	self	NR	PC's of B	Local Policing
"	self	NR	Recommends deportatation submission to Court	Local Policing
Oct 23	self	NR	Letter draft re gay law reform	Statute Law
Oct 25	self	NR	Treasury Reports	Finance
Oct 29	self	NR	Insert for Draft re Medical Aid Clinic	Local Policing
Nov 4	self	Hornby	Old Peoples Xmas Party	Local Policing
Nov 5	Muldoon	Auckland	Damage at Ngati Toa Domain	Local Policing
Nov 15	self	NR	Complaint re inaccuracy in report	NR
Nov 19	self	NR	Request draft re Task Force	Local Policing
Nov 29	Mayor	Kaitangata	Requests information	Local Policing
"	self	NR	Shoguns cf firearms?	Firearms
Dec 3	self	Wellington	Commends Police Operation	Local Policing

Date 1974	On Behalf	City Locality	Request or Recommendation	Subject
Dec 9	HMMB	Bryndwr Christchurch	Requests YAS to advise mother with problem son	Local Policing
"	self	Dunedin	Recommends withdrawal of firearms permits of gangs	Local Policing
"	DL	Wellington	Report on Water Cannons for brawls	Local Policing
Dec 13	self	NR	Views on appeal re Cannabis	Local Policing
"	self	NR	Views re appeal, media and drug abuse	Local Policing
1975				
Jan 22	self	NR	Requests report re armed criminals	NR
"	self	NR	Requests report re gangs	Statute Law
"	self	Onehunga	Speech notes to open new Police Station	Buildings
Jan 29	self	Auckland	Media referral on how to deal with drunks	Training
Jan 30	MM	Christchurch	Bikies intimidate service stations, procedures	Training
Jan 31	SK	Fendalton Christchurch	Death of girl with drugs	Local Policing
Feb 4		Wellington	New Policy	NR
Feb 11		Christchurch	Monthly crime figures, query source	Stats
Feb 17		Wellington	Investigation techniques	Local Policing
Feb 18		Wellington	Police numbers?	Staffing

Date 1975	On Behalf	City Locality	Request or Recommendation	Subject
Feb 19		Wellington	Suggests Court orders needed for bikies	Local Policing
Feb 26		NR	Police execute Distress warrant for teaching bond	Local Policing
"	self	NR	To review J team concept	
"	self	NR	Recommends review of law Bikie damage to house	Statute Law
"	self	NR	Recommends appeal, Mt John proceedings	Local Policing
"	self	NR	Hotel security guards proposals	
"	self	Wellington	Enquiry re witness 'stood over'	Local Policing
"	self	Christchurch	Video cameras to be on Hand, media comment??	Local Policing
Mar 4	NR	Brockville	Police to patrol Brockville on Late shopping night	"
Mar 6	NR	Christchurch	Referral Ch Star leader re ombudsman	NR
Mar 7	McGuigan MP	Lyttelton	Requests surveillance of gang house	Local Policing
"	Franks	Auckland	Advice on how to handle trouble makers	Local Policing
Mar 12 (3 Apr)	M.	Riccarton Christchurch	Requests make special on behalf	Local Policing
Mar 17 (Apr 10)	NR	Ilam Christchurch	Requests action re site thefts, industrial action threatened	Local Policing
Mar 25	NR	Rawene Northland	Helicopter for drug Searches	Local Policing

Date 1975	On Behalf	City Locality	Request or Recommendation	Subject
Mar 25	NR	NR	Increase in penalties for cannabis use	Drug Abuse
"	self	Christchurch	Recommends prosecution of gang	Local Policing
Apr 2	RNW	NR	Draft reply required	NR
Apr 3 (Mar 12)	JS	Riccarton Christchurch	Action required re wilful damage	Local Policing
"	AJG	Makarewa	Action required, missing girl	Local Policing
"	self	Wellington	Recommend Crown Solicitor be engaged where weapons used to emphasise public concern	Local Policing
Apr 7	self	Wellington	Requests information re arms dealers/ clubs	Firearms
Apr 9	Tourist & Publ	Wellington	Standard reply to Opposition Research Unit	Admin
Apr 10 (Mar 17)	NR	Ilam Christchurch	Thefts at University site works	Local Policing
"	Hunt	Twizel	Civillian increase	Staffing
Apr 15	NR	NR	J teams	Staffing
Apr 17	Commr	Police College	Accepts invitation to Police recruit graduation	
Apr 18	NR	Johnsonville Wellington	Review hotel closing	
Apr 21	NR	Karori Wellington	Improvements in firearm Storage	Firearms
"	Brunt	Christchurch	Funds for 'Speak-Up' Campaign	Admin

Date 1975	On Behalf	City Locality	Request or Recommendation	Subject
May 15	M.C.W.	Papanui Christchurch	Investigation mishandled, recommendations regarding procedures/tactics	Local Policing
May 26	M.C.	NR	Request review decision, investigation of damage	Local Policing
Jun 5	Maori Affairs	Wellington	Minister requests meeting re 'Task Force'	Local Policing
Jun 11	D.R.A.	Kelburn Wellington	Complaint re police action on non-payment taxi fare	Local Policing
Aug 8	B.B. (MP)	Christchurch	Recoomendation re phone equipment in Operations Room	Equipment
Spt 24	Y.B.	Christchurch	Report re brawl	Local Policing
"	Police	Lawrence	Commendation re police action	Local Policing
Oct 2	S.McC.	Wellington	Requests review decision re air pistol	Local Policing
Oct 21	self	Wellington	Requests review raffle regulations re value	Statute Law
Oct 31	J.S.I.	NR	Review	NR
Nov 24	S.C.	Redcliffs Christchurch	Requests patrols	Local Policing

This schedule is composed from the letter file of copies held in the collection of Minsterial papers donated by the Hon Michael Connelly to the library of the University of Canterbury.

Where insufficient date was recorded, the annotation NR is inserted to indicate there is insufficient record or no record. The notation 'self' in the column 'On Behalf' indicates the correspondence appears to have been intiated by the Minister himself.

Arrests APPENDIX 2

Discretion to be Used

A106 (1) The power to arrest without warrant is at all times to be exercised with discretion.

(2) Members should exercise the utmost restraint and discretion in using the power to arrest children and young persons without warrant. Supervisors must ensure that all arrests are made for good and sufficient reasons and in accord with established policy outlined in Police Practice for Constables: Part 1.

(3) When minor offences are committed by otherwise respectable citizens who can be brought before the Court on summons, there is no need to arrest.

(4) Every effort must be made to avoid allegations that the Police use their powers of arrest to settle what might appear to be private differences between themselves and others. It is appreciated that in many cases, such as assaulting or obstructing the Police, where arrest is necessary, the member concerned should make that arrest. However, whenever practicable a member should ensure that an offence involving himself, or a near relative or friend as the complainant, is investigated and any arrest made by another member who has been assigned to the inquiry following the submission of a formal complaint.

(5) When an arrest is made in circumstances where desirably it should have been made by another member, supervising commissioned and non-commissioned officers are to review the need for arrest as early as possible. Where the supervisor considers the arrest to be inappropriate, the prisoner is to be released forthwith on bail and the file submitted for consideration as to whether the charge should be proceeded with.

Civil Liability

A107 Particular care shall be taken that the right person is arrested on warrant. Although section 30 of the Crimes Act 1961 gives protection from criminal liability if a member believes in good faith and on reasonable and probable grounds that the person is the one named in the warrant, it does not give any protection from civil liability if the wrong person is arrested. Even though section 315 (2) (b) of the Crimes Act 1961 authorises any constable to arrest without warrant any person whom he has good cause to suspect of committing any offence punishable by imprisonment, this has no application to arrest on warrant. With warrants to apprehend and warrants of committal, members are protected only if they arrest the person actually named in the warrant.

Informing Offender

A108 (1) When a person is arrested he should not be left in doubt as to the nature of the charge which is laid against him.

(2) It is the duty of the arresting member to tell the prisoner the nature of the charge, unless the circumstances are such that the prisoner must know the general nature of the alleged offence for which he is detained.

(Replaces first leaf of "Arrests".)
Reprinted December 1983.

When an intoxicated person is detained in a police station under the provisions of this section he has a statutory right to telephone one person of his choice. Unless he insists on making the call personally, a call by the watchhouse keeper or arresting officer will suffice. Note that the word "intoxication" includes persons under the influence of drugs and/or other substances. Persons under the influence of glue or solvents recover quite quickly once they cease inhaling the substance. In terms of subsection (5) such a person should be released once he is capable of properly looking after himself. In the case of children or young persons some follow-up action would be desirable in the interests of the child or young person.

(3) (a) *Minor Behaviour and Language Offences (section 4 Summary Offences Act 1981)*—These offences are those which are not likely to cause violence against persons or property, such other offences being dealt with under section 3 Summary Offences Act 1981. Minor behaviour and language offences that do not involve an element of violence, and where the offender desists when called upon to do so, seldom warrant an arrest and serious consideration should be given to whether there is a need to prefer any charge at all.

(b) In *Kinney v Police* the Court when considering the forerunner to section 4 said "The section should not be allowed to scoop up all sorts of minor troubles and it certainly is not designed to enable the Police to discipline every irregular or inconvenient or exhibitionist activity or to put a criminal sanction on over-exuberant behaviour, even when it might be possible to discern a few conventional hands raised in protest or surprise."

(c) What the law regards as obscene or indecent language has become more acceptable to a large proportion of the general public and is commonly used in films and books. It is therefore pointless for the police to take any action unless some reasonable person is genuinely offended or if young children are present, and in either case a warning should first be issued. Generally arrests should not be necessary for language offences unless a breach of the peace or other more serious offences would be likely if the offender is not removed from the scene. The same principle applies to insulting and offensive language and in all cases a warning should be given. A good police member should be able to settle verbal altercations by tact, diplomacy, patience, and personality, without having to fall back on the full force of the law. The Courts have recently been critical of police prosecutions for language offences where the only person to hear the language was a member of police, the implication being that it is an occupational hazard for members of police to overhear bad language and that prosecutions arising from such cases are to be discouraged. It must be noted that some arrests for language offences result in assaults on the police, obstruction by the arrested person's friends, and complaints and civil actions against the police. In some cases members have used the threat of arrest too early in the altercation, and, when challenged, implemented the threat without considering the full implication of their actions. Hasty threats of arrest in such circumstances should be avoided.

Arrests]

(4) *Idle and Disorderly Persons*—Being an Idle and Disorderly Person is no longer an offence and such persons who would have come into this category prior to 1 February 1981 must now be referred to voluntary welfare agencies which cater for the less fortunate and human derelicts. However, children and young persons *under the age of 16 years*, and who are associating with known criminals or drug addicts, or living in an environment which is detrimental to their physical or moral wellbeing, may be taken into custody without warrant and delivered into the custody of their parents or guardians. This power was inserted by section 50 of the Summary Offences Act 1981 and amended section 12 of the Children and Young Persons Act 1974, and the provisions must be strictly observed to avoid any allegations of abuse.

(5) (a) *Minor Drug Offences (simple use or possession of drugs)*—In less serious offences of drug misuse, as distinct from trafficking offences, the primary aim must be the rehabilitation of the persons involved, particularly young persons, without unnecessarily resorting to punitive measures.

(b) Parents, relatives, or friends who are concerned that a young person may be involved in drug misuse, must be able to approach the police for advice or guidance without the fear that the young person involved will be prosecuted as a matter of course.

(c) When such advice or guidance is sought the matter should, where possible, be referred for consultation to either the Drug Squad, a member trained in drug operations, or a non-commissioned or Commissioned Officer.

(d) Police have a general discretion whether or not to prosecute. If an offence involving a young person and drugs is revealed when advice is sought from the police or in the subsequent counselling of the offender, the decision not to prosecute should be exercised if the following criteria are met:

(i) The offence is minor and involves only simple use or possession of drugs or drug utensils and the offending does not continue.

(ii) The offender is not involved in trafficking.

(iii) Medical treatment is accepted if necessary.

(iv) There is a positive response to counselling.

(v) There is no danger anticipated to other persons by any act or behaviour of the young person concerned.

(vi) In cases where advice has been sought but all efforts to assist are to no avail a Court appearance may be in the best interests of the offender, but no proceedings shall be commenced under such circumstances without the approval of a Commissioned Officer and only after the person who contacted the police in the first instance has been notified of the intended action.

(vii) Discretion to prosecute in other minor cases of drug misuse is to be based on the same criteria as that prevailing for all crimes and offences but the fact must not be overlooked that if a drug offender (not being a trafficker) has already sought treatment and is no longer offending, he should be given a warning rather than be arbitrarily prosecuted.

(6) (a) *General*—In the past districts have consulted National Headquarters as to whether to exercise discretion not to prosecute in unusual cases or for laws that are obscure or have become obsolete. These queries are welcomed, not only so that guidance can be given in the particular case, but also that National Headquarters is made aware of the problems of the district so that policy directives can be given and steps taken to have the law amended.

(b) Police should be careful not to get themselves into difficult situations. For example do not order a person to move on if you have no power, because in the event of a refusal you will feel forced into taking action, but there may be no law to support you. In other words, only give orders where there is legal power to back them up, otherwise use a request. Similarly do not threaten to arrest people if they do or do not do something unless there is clear power and the arrest is quite justified.

(c) The image the police must endeavour to build is that of the protector rather than oppressor.

(d) The question that should be uppermost in the minds of the police when considering whether to prosecute a minor offence is whether an arrest or prosecution is the best way of resolving the particular incident or whether there is some alternative that meets the occasion e.g., warning, caution, counselling, or referral to a more appropriate agency.

(e) Whenever a decision is made to exercise the discretion not to prosecute a particular offender, care must be taken to ensure the complainant is clearly advised the reasons for non-prosecution. A letter to a complainant that does nothing more than state that no further police action will be taken is unacceptable. The reasons for the decision not to prosecute should be stated with some clarity. Better communications with the public will lead to better understanding and acceptance of proper reasons for non-prosecution in appropriate cases.

Arrest and Custody of Mothers of Very Young Children

A112 (1) The arrest of females who are responsible for the immediate oversight or care of very young children should be undertaken only when there is no practical alternative and where suitable arrangements can be made for the care of the children. In appropriate circumstances consideration should be given to arranging an early Court hearing or to granting police bail. Where this is not practical or possible the matter is to be referred to a Commissioned Officer before the arrested person is lodged in police cells.

(2) (a) The need to detain a breast-feeding mother in police custody shall be carefully reviewed by a Commissioned Officer and pursuant to this requirement, a member in charge of a watchhouse shall not place any such person in a police cell until he has satisfied himself that the necessary approval has been given.

(b) As a general rule a suckling infant should not be separated from it's mother, unless there are very good reasons why such separation is necessary, e.g., the safety of the child, or medical reasons. Where medical reasons are involved a certificate from a doctor, preferably a police surgeon, is to be obtained.

(c) As police cells are not designed to cater for infants, where custody is essential alternative arrangements should be made to enable the mother and child to be held together in more suitable surroundings and if necessary, the assistance of the Department of Social Welfare or other welfare agency should be sought for this purpose.

(Replaces third leaf of "Arrests".)
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